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Rules and Regulations

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–2 FIR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2002 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule reducing the production cap for the 2002 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2002 RDP brings the figure in line with 2001 crop yields.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; *telephone:* (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to reduce the production cap for the 2002 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2002 RDP brings the figure in line with 2001 crop yields. This action was recommended by the RAC at a meeting on November 13, 2001.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market

needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on November 13, 2001, and recommended reducing the production cap from 2.75 to 2.0 tons per acre. With 2001 raisin-type variety grape production down by 31 percent, according to the California Agricultural Statistics Service, the RAC recommended reducing the production cap by about 30 percent to reflect 2001 crop yields. Paragraph (t) in § 989.156 of the order's rules and regulations was revised accordingly.

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projects a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the 2002 RDP. The RAC increased this amount to 54,086 tons at a meeting on January 11, 2002. Of the 54,086 tons, 49,086 tons were made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who plan to remove vines receiving priority over those who plan to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons will be made available to approved producers who submit applications to the RAC from December 21, 2001, through May 1, 2002, and plan to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.156(t) of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP. This rule continues to reduce the cap from 2.75 to 2.0 tons per acre to accurately reflect 2001 crop yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2002 RDP will have the opportunity to earn some income for not harvesting a 2002–03 crop. Producers will sell the certificates to handlers next fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2002 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2001–02 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production

cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.,* the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. An interim final rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11555). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period which ended April 1, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that finalizing this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 11555 on March 15, 2002, is adopted as a final rule without change.

Dated: May 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11949 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Payment of Post-insolvency Interest In Receiverships With Surplus Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation has adopted a final rule regarding the payment of post-insolvency interest in insured depository institution receiverships with surplus funds. The final rule establishes a single uniform interest rate, calculation method, and payment priority for post-insolvency interest. The final rule provides that where funds remain after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act; paid at the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter; adjusted each quarter after the receivership is established; and based on a simple interest method of calculation.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, (202) 736–0168; or Rodney Ray, (202) 898–3556.

SUPPLEMENTARY INFORMATION:

I. Background

In December 2000, Congress granted the FDIC express rulemaking authority regarding the payment of post-insolvency interest in receiverships with surplus funds. The American Homeownership and Economic Opportunity Act of 2000 added new subparagraph (C) to section 11(d)(10) of the FDI Act, which reads as follows:

> (C) RULEMAKING AUTHORITY OF CORPORATION. The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payment of post-insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

By virtue of this rulemaking authority, the final rule regarding post-insolvency interest will preempt any inconsistent state law by providing a single uniform interest rate and priority of distribution for post-insolvency interest in receiverships established after the rule becomes effective. *See City of New York* v. *FCC,* 486 U.S. 57, 63 (1988) (regulation promulgated by federal agency acting within the scope of its congressionally delegated authority may preempt state law). The final rule will apply to receiverships established after the effective date of the rule. Historically, relatively few receiverships have generated sufficient recoveries to enable post-insolvency interest to be paid. Consequently, the final rule will probably apply to only a small number of receiverships in the future.

II. Notice of proposed rulemaking

On December 18, 2001 the FDIC caused to be published in the **Federal Register** a notice of proposed rulemaking regarding the payment of post-insolvency interest in receiverships with surplus funds. See 66 FR 65144 (December 18, 2001). The notice of proposed rulemaking discussed the features of a proposed rule and solicited comments from the public for a period of 60 days. The comment period expired on February 19, 2001. The FDIC received one comment from the Co-operative Central Bank, which insures deposits that exceed FDIC deposit insurance limits in 75 co-operative

banks in Massachusetts. The comment described the proposed rule as ''a fair and balanced approach to resolving the difficult issue of payment of post-insolvency interest in receiverships with surplus funds. It is entirely consistent with the public policy set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, the national depositor preference statute, and is in the public interest. By providing uniform interest rate and depositor priority for distributions of post-insolvency interest, the Proposed Regulation appropriately allocates post-insolvency interest more equitably than at present.''

III. Final rule

The final rule is essentially identical to the proposed rule. The final rule provides that after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act. This is consistent with how the principal amounts of creditor claims are paid and would be consistent with Congress's intent that deposit liabilities be preferred over other liabilities.

The final rule further provides for the post-insolvency interest rate for all FDIC-administered receiverships to be based on the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill. The 3-month Treasury bill is widely recognized as a performance benchmark for cash investment management and its yield has historically tracked to some degree changes in the rate of inflation. The post-insolvency interest rate will be adjusted quarterly in order to mitigate interest-rate risk due to changes in economic conditions during the life of the receivership. Post-insolvency interest distributions will be calculated using a simple interest method, which should provide a reasonable amount of interest to compensate receivership creditors for the time value of money owed from the time the receivership is established until dividend payments are received.

The final rule contains a revision to paragraph (c)(3) of the proposed rule to clarify that post-insolvency interest will be calculated, not ''distributed,'' on proven claims from the date the receivership is established. Revised paragraph (c)(3) also provides that post-insolvency interest on a contingent claim will be calculated from the date that the claim becomes proven. A contingent claim is a claim that has not accrued as of the date of the appointment of the receiver, but is dependent on some future event. A contingent claim may become proven if the event triggering payment occurs in time for the claim to be paid by the receiver. In such case, post-insolvency interest will be calculated from the date the claim becomes proven, not from the date the receivership is established.

IV. Paperwork Reduction Act

The proposed rule will not involve any collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the FDIC has certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will only apply to FDIC-administered receiverships established after the effective date of the rule, and it does not impose new reporting, recordkeeping or other compliance requirements on receivership creditors. The final rule continues the FDIC's existing practice of making post-insolvency interest distributions to creditors holding proven claims in surplus receiverships prior to making distributions to equityholders, based on their equity interests, in a failed insured depository institution. In addition, the final rule will provide interested parties, including small entities, with greater certainty in future FDIC-administered receiverships by establishing a single uniform interest rate and method for making post-insolvency interest distributions. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis are not applicable.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set forth in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.7 is added to part 360 to read as follows:

§ 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insolvency interest to creditors with proven claims in all FDIC-administered receiverships established after June 13, 2002.

(b) *Definitions.* (1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until the principal amount of a proven claim has been fully distributed but not thereafter. Post-insolvency interest shall be calculated on a contingent claim from the date such claim becomes proven.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of May, 2002.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–11947 Filed 5–13–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

Exports; Notification and Recordkeeping Requirements; Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay.

SUMMARY: The Food and Drug Administration (FDA) is staying the final rule on notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. This action is in response to four requests for a stay because certain parties would not be able to comply with the effective date of March 19, 2002.

DATES: Effective May 14, 2002; 21 CFR 1.101 is stayed until June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 2001 (66 FR 65429), FDA (we) published a final rule entitled ''Exports: Notification and Recordkeeping Requirements.'' The final rule established the export notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. The final rule implements certain statutory changes made by the FDA Export Reform and Enhancement Act and will be codified at § 1.101 (21 CFR 1.101).

The final rule was to become effective on March 19, 2002. On March 1, 2002, and later on March 8, 11, and 12, 2002, we received three petitions for stay of administrative action and one letter requesting that we stay the final rule's effective date by 6 months. In general, the petitions and letter stated that certain parties would be unable to comply by the original March 19, 2002, effective date and that some parties were confused as to the final rule's applicability to certain products.

On March 18, 2002, we notified the parties that the agency intended to grant the petitions and the letter's request, in part, by extending the final rule's effective date by 3 months, and that the agency would publish a document in the **Federal Register** staying the rule under 21 CFR 10.35(e). This stay should allow the parties and other affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States. The new effectiveness for § 1.101 is June 19, 2002.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The agency is staying § 1.101 until June 19, 2002, because the agency has determined that it is appropriate to allow affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States.

This action pertains solely to the requirements of the final rule. Affected industry members must continue to comply with the statutory requirements for exports under section 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 and 321).

Dated: May 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11935 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The ANADA provides for use of an injectable lincomycin solution for the treatment of infectious arthritis and mycoplasma pneumonia in swine.

DATES: This rule is effective May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–274 that provides for the use of Lincomycin (lincomycin HCl) Injectable 30% by intramuscular injection for the treatment of infectious arthritis and mycoplasma pneumonia in swine. Alpharma's Lincomycin Injectable 30%

is approved as a generic copy of Pharmacia & Upjohn Co.'s LINCOMIX 300, approved under NADA 34–025. The application is approved as of February 1, 2002, and the regulations are amended in 21 CFR 522.1260 to reflect the approval. The basis of approval is discussed in the freedom of information summary. Section 522.1260 is also being amended to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1260 is amended by revising the section heading and paragraphs (a), (b), (e)(1)(i), (e)(1)(iii), (e)(2)(i), and (e)(2)(iii) to read as follows:

§ 522.1260 Lincomycin.

(a) *Specifications.* Each milliliter of solution contains lincomycin hydrochloride monohydrate equivalent to 25, 50, 100, or 300 milligrams (mg) of lincomycin.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (e) of this section.

(1) No. 000009 for uses as in paragraph (e) of this section.

(2) No. 046573 for use as in paragraph (e)(2) of this section.

* * * * *≤

(e) * * *

(1) * * *

(i) *Amount.* 5 mg per pound (/lb) of body weight twice daily or 10 mg/lb body weight once daily by intramuscular injection; 5 to 10 mg/lb body weight one or two times daily by slow intravenous injection.

* * * * *≤

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(i) *Amount.* 5 mg/lb body weight once daily by intramuscular injection for 3 to 7 days.

* * * * *≤

(iii) *Limitations.* Do not treat within 48 hours of slaughter.

Dated: April 26, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–11933 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8994]

RIN 1545–AU76

Electing Small Business Trust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the qualification and treatment of electing small business trusts (ESBTs). The final regulations interpret the rules added to the Internal Revenue Code (Code) by section 1302 of the Small Business Job Protection Act of 1996, section 1601 of the Taxpayer Relief Act of 1997, and section 316 of the Community Renewal Tax Relief Act of 2000. In addition, the final regulations provide that an ESBT, or a trust described in section 401(a) of the Code or section 501(c)(3) of the Code and exempt from taxation under section 501(a) of the Code, is not treated as a deferral entity for purposes of § 1.444–2T. The final regulations affect S corporations and certain trusts that own S corporation stock.

DATES: *Effective Date:* These regulations are effective May 14, 2002.

Dates of Applicability: The regulations regarding ESBTs under § 1.641(c)–1(d) through (k), (l) *Examples 2–5,* § 1.1361–1(h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), (j)(12), and (m), § 1.1362–6(b)(2)(iv), § 1.1377–1(a)(2)(iii) and (c) *Example 3* apply for taxable years beginning on and after May 14, 2002. The regulations regarding taxation of ESBTs under § 1.641(c)–1(a), (b), (c), and (l) *Example 1* are applicable for taxable years of ESBTs that end on and after December 29, 2000. The regulations under § 1.444–4 are applicable to taxable years beginning on or after December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Bradford Poston or James A. Quinn, (202) 622–3060; specifically concerning § 1.444–4, Michael F. Schmit, (202) 622–4960 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and assigned control number 1545–1591.

The collections of information in these final regulations are in § 1.1361–1(j)(12), § 1.1361–1(m), and § 1.444–4(c). The information required by § 1.1361–1(j)(12) and § 1.1361–1(m) is needed to allow trusts to elect to be ESBTs and to allow for the conversion of a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The likely respondents are trusts.

The information required by § 1.444–4(c) is needed to allow certain S corporations to reinstate their previous taxable year that was terminated under § 1.444–2T. The likely respondents are businesses and other for-profit institutions.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn.: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 with copies to the Internal Revenue Service, Attn.: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by July 15, 2002. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including

whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The burden contained in § 1.444–4 is reflected in the burden of Form 8716.

Estimated total annual reporting burden: 7,500 hours.

Estimated annual burden per respondent: 1 hour.

Estimated number of respondents: 7,500.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 29, 2000, proposed regulations (REG–251701–96) were published in the **Federal Register** (65 FR 82963) containing proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to S corporations and electing small business trusts (ESBTs). Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755) (August 20, 1996) (the 1996 Act), amended sections 641 and 1361 of the Code to permit an ESBT to be an S corporation shareholder. Further amendments were made to section 1361(e) by the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 1601(c)(1)) (August 5, 1997), and the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763) (December 21, 2000). Prior section 641(d) was redesignated as section 641(c) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 6007(f)(2)) (July 22, 1998).

On December 29, 2000, proposed and temporary regulations were also published in the **Federal Register** (65 FR 82963) and (65 FR 82926) containing amendments to the Income Tax Regulations (26 CFR part 1) relating to the election of a taxable year other than the required taxable year.

A public hearing was held on the proposed and temporary regulations on April 25, 2001. Written comments were received on the proposed and temporary regulations. The proposed regulations, with certain changes in response to the comments, are adopted as final regulations, and the temporary regulations are removed.

Summary of Comments and Explanation of Revisions

Beneficiaries and Potential Current Beneficiaries

For a trust to qualify as an electing small business trust (ESBT) and as a shareholder in a subchapter S corporation, only certain types of persons are permitted to be beneficiaries of the trust. Once a trust makes the ESBT election, each potential current beneficiary (PCB) of the trust is treated as a shareholder of the S corporation. Thus, the identity of the beneficiaries affects whether a trust can be an ESBT, while the identity and number of PCBs affect whether the corporation can be a S corporation. It is possible under certain circumstances for a person to be a PCB, as that term is defined in section 1361(e)(2) and the proposed regulations, without being a beneficiary, as that term is defined in the proposed regulations. For example, a person who may receive a distribution from an ESBT under a currently exercisable power of appointment is a PCB but is not treated as a beneficiary until the power is actually exercised.

Some commentators expressed concerns about the possible adverse effects of the definition of PCBs, especially in situations involving potential recipients of a currently exercisable power of appointment. Some commentators suggested that a person should have to meet the definition of a beneficiary before the person could be considered a PCB. Commentators also suggested that a person who may receive a distribution under a currently exercisable power of appointment should not be treated as a PCB until exercise of the power. Several commentators suggested that a temporary waiver or release of a broad power of appointment should be sufficient to limit the number of PCBs during a period of time.

The final regulations do not change the basic definition of PCBs. While there is no statutory definition of beneficiary in section 1361(e), there is a statutory definition of PCB. Under section 1361(e)(2), a PCB is, ''with respect to any period, any person who at any time during such period is entitled to, or, at the discretion of any person, may receive, a distribution from the principal or income of the trust.'' The IRS and the Treasury Department believe that it would be inconsistent with this statutory definition not to treat a person as a PCB until an actual distribution is made to that person pursuant to the exercise of a power of appointment. The final regulations provide that an attempt to temporarily waive, release, or limit a power of appointment would not be effective to limit the PCBs because of uncertainty as to the effectiveness of a temporary waiver, release, or limitation on the power of appointment under state law and the potential to manipulate a temporary waiver, release, or limitation on a power of appointment to avoid the S corporation shareholder limitation rules. However, a permanent release of a power of appointment that is effective under local law may reduce the number of PCBs of an ESBT.

Another commentator suggested that the separate share provisions of section 663(c) should apply so that beneficiaries or PCBs of the share holding the assets other than the S corporation stock would not be counted as beneficiaries or PCBs of the S portion. There is no authority to ignore beneficiaries and PCBs of a portion of a trust holding assets other than S corporation stock. The statutory definitions of an ESBT and of a PCB look to all the persons who are beneficiaries or PCBs of the trust, not just the S portion. In addition, the separate share provisions of section 663(c) are not applicable because they generally apply only for purposes of allocating distributable net income under sections 661 and 662.

Two commentators requested guidance on what period of time is considered in determining who are PCBs in light of the statutory definition. They suggested that *period* means any moment in time. Thus, if an event occurs during a taxable year that changes who the PCBs are, the PCBs before and after the event would not be counted cumulatively for purposes of the 75-shareholder limit. The shareholder limitation in section 1361(b)(1)(A) means that an S corporation may not have more than 75 shareholders at any particular time

during the taxable year. See Rev. Rul. 78–390 (1978–2 C.B. 220). The final regulations clarify that a person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of the trust. The final regulations also provide that a person who, after the exercise of a power of appointment, receives only a future interest in the trust is not a PCB.

One commentator was concerned about the statement in the proposed regulations that if a person holds a general lifetime power of appointment, the corporation will exceed the 75-shareholder limit and thus the corporation's S election will terminate. The commentator pointed out that a beneficiary's power to withdraw assets from a trust is considered a general power of appointment but the beneficiary is the only one who can receive those assets. The final regulations clarify that the potential recipients of current distributions pursuant to an exercise of the power are considered, not whether the power is a general or special power of appointment.

The proposed regulations provide that a person with a future beneficial interest is not a beneficiary of an ESBT if that interest is so remote as to be negligible. This provision permitted trusts to qualify as ESBTs even though there was a remote possibility that all the named beneficiaries would die and the trust assets would escheat to the state, an impermissible beneficiary of an ESBT. The Community Renewal Tax Relief Act of 2000 eliminated this potential problem by changing the statutory definition of permissible beneficiaries to include an organization described in section 170(c)(1) that holds a contingent interest in the trust and is not a PCB. The final regulations, therefore, remove the provision regarding remote beneficiaries and the accompanying example.

Interests in Trust Acquired by Purchase

Two commentators requested clarification on whether a trust is eligible to be an ESBT if it acquires property in a part-gift, part-sale transaction, such as a gift of encumbered property or a net gift, in which the donor transfers property to a trust provided the trust pays the resulting gift tax. Section 1361(e)(1)(A)(ii) provides that a trust is eligible to be an ESBT only if ''no interest in the trust was acquired by purchase.'' Section 1361(e)(1)(C) defines *purchase* as ''any acquisition if the basis of the property acquired is determined under section 1012.'' The proposed regulations provide that if any portion of a beneficiary's basis in the beneficiary's interest is determined under section 1012, the beneficiary's interest was acquired by purchase. The final regulations clarify that the prohibition on purchases applies to purchases of a beneficiary's interest in the trust, not to purchases of property by the trust. A net gift of a beneficial interest in a trust, where the donee pays the gift tax, would be treated as a purchase of a beneficial interest under these rules, while a net gift to the trust itself, where the trustee of the trust pays the gift tax, would not.

Grantor Trusts

Most commentators praised the position in the proposed regulations that a trust, all or a portion of which is treated as owned by an individual (deemed owner) under subpart E, part I, subchapter J, chapter 1 of the Code (grantor trust), may elect to be an ESBT. One commentator, however, suggested that grantor trusts should not be permitted to make ESBT elections. The final regulations continue to provide that a grantor trust may elect to be an ESBT.

The proposed regulations provide that if a grantor trust makes an ESBT election, the trust consists of a grantor portion, an S portion, and a non-S portion. The items of income, deduction, and credit attributable to the grantor portion are taxed to the deemed owner of that portion. The S portion is taxed under the special rules of section 641(c), while the non-S portion is subject to the normal trust taxation rules of subparts A through D of subchapter J.

Commentators made several suggestions regarding the taxation of a grantor trust that elects to be an ESBT. Some suggested that the taxation rules of section 641(c) should override the grantor trust rules of section 671, and thus all tax items attributable to the trust's shares in the S corporation should be taxed to the trust, not the deemed owner. Some suggested the grantor trust rules should not apply to any tax items of a trust that makes an ESBT election. According to these commentators, this approach would eliminate administrative complexity in determining what portion of the trust is treated as owned by the deemed owner. Others suggested that the trustee should be permitted to elect to have all items attributable to the S corporation taxed to the trust, not to the deemed owner. Others suggested that none of the S items should be taxed to the deemed owner but that ESBTs should be subject to additional reporting requirements to ensure the collection of the proper tax. Another suggested that the deemed owner should be taxed on the items from an ESBT only if the deemed owner is treated as owning the entire trust, not just a portion of the trust. Other commentators agreed with the taxation regime set forth in the proposed regulations.

The IRS and the Treasury Department believe that the qualification and taxation of ESBTs are two separate issues and that the proposed regulations take the correct position regarding the taxation of grantor trusts that make ESBT elections. Section 1361(e)(1) expands the permissible shareholders of an S corporation to include trusts that meet the definition of an ESBT. Grantor trusts are not excluded from the definition of an ESBT and, therefore, are permitted to make ESBT elections. Making an ESBT election, however, does not alter the long established treatment of tax items attributable to the portion of a trust treated as owned by the grantor or another. Section 671 requires that items of income, deduction, and credit attributable to the portion of the trust treated as owned by a grantor or another must be taken into account by that deemed owner. Only remaining items of the trust are subject to the provisions of subparts A through D of subchapter J. The special taxation rules for ESBTs are contained in subpart A and, therefore, only apply to any portion of the trust that is not treated as owned by the grantor or another under subpart E.

As pointed out by one of the commentators, the issue of determining what portion, if any, of a trust is treated as owned by the grantor or another has existed for years in a much broader context than in the application of the ESBT rules. The special taxation rules of section 641(c) would apply only to S items, while normal trust taxation rules clearly apply to non-S items. As a result, taxing all the S items to the trust would not eliminate the need to determine what portion of the trust is a grantor trust and the resulting administrative difficulties with respect to the non-S tax items of the trust.

Some commentators requested clarification of the effect of an ESBT election by a grantor trust. One commentator suggested that if a wholly-owned grantor trust makes an ESBT election, only the deemed owner should be treated as the shareholder of the S corporation. Another commentator made a similar suggestion where the grantor has retained the power to amend or revoke the trust or to make gifts from

the trust. The IRS and the Treasury Department believe that the definitional and qualification requirements of section 1361(e) apply to any trust that makes an ESBT election irrespective of whether it is a grantor trust. Therefore, the final regulations continue to provide that the deemed owner is treated as a PCB along with others who meet the definition of a PCB.

Charitable Contributions

The proposed regulations provide that if an otherwise allowable deduction of the S portion is attributable to a charitable contribution paid by the S corporation, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument and will be deductible if the other requirements of section 642(c)(1) are met. Several commentators requested clarification concerning the other requirements of section 642(c)(1), the application of the limitations under section 681, and the election to treat charitable payments made after the close of a taxable year as made during the taxable year. One commentator suggested that the S portion should be entitled to a deduction for its share of any charitable contribution made by the S corporation because it is a separately stated item under section 1366 that the S portion takes into account under section 641(c)(2)(C)(i).

Section 641(c)(2)(C) specifies the items of income, loss, deduction, or credit that the S portion is required to take into account in determining its tax. These items include items required to be taken into account under section 1366, that is, the trust's pro rata share of the S corporation's items passed through to it as a shareholder. Both section 641(c)(2)(C) and section 1366(a) reference items that must be taken into account but do not themselves provide the authority to include in income, deduct from income, or claim a credit with respect to those items. That authority comes from other Code sections. A charitable contribution made by an S corporation is required to be a separately stated item under section 1366 because whether the item is deductible depends on the identity of the shareholder and the provisions of the Code applicable to charitable contributions made by that type of shareholder. Thus, for an individual shareholder, the contribution is deductible only in accordance with the provisions of section 170, while for a trust or estate, the contribution is deductible only in accordance with the provisions of section 642(c).

The final regulations continue to provide that the S portion's share of a charitable contribution made by the S corporation is deductible only if it meets the requirements of section 642(c)(1). The final regulations clarify how those requirements apply to such a contribution. If a contribution is paid from the S corporation's gross income, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument. The limitations of section 681, regarding unrelated business income, apply to determine whether the contribution is deductible by the S portion. The final regulations also clarify that the charitable contribution is deductible by the S portion, if at all, only in the year that it is an item required to be taken into account by the trust under section 1366. The trustee may not make the election to treat a contribution made by the S corporation after the close of the taxable year as made during the taxable year. This election is available only for charitable payments actually made by the trust, not for the trust's share of contributions made by another entity.

One commentator suggested that if the trust contributes S corporation stock to a charitable organization, the S portion should be entitled to a charitable deduction with respect to the contribution. Deductions available to the S portion are limited by section 641(c)(2)(C) to S corporation items required to be taken into account under section 1366 and the S portion's share of state and local income taxes and administrative expenses. Charitable contributions by the trust are not items included in the list of items that may be taken into account by the S portion under section 641(c)(2)(C).

Therefore, the final regulations do not change the rule that no deduction is available to either the S portion or the non-S portion with respect to a contribution of S corporation stock to charity.

Interest Paid on Loans To Acquire S Corporation Stock

The proposed regulations provide that interest expense incurred by the trust to purchase S corporation stock is allocated to the S portion but is not an administrative expense. Therefore, the interest is not an allowable deduction of the S portion under section 641(c)(2)(C)(iii). Several commentators suggested that the interest should be deductible. Some thought the interest should be allocated to the non-S portion and deducted under the investment interest limitations of section 163(d). Others thought the interest should be allocated to the S portion but should be considered a deductible administrative expense. One commentator suggested that if the shareholders are required to buy the stock of a departing shareholder pursuant to the terms of a stock purchase agreement, any interest expense incurred as a result of financing the stock purchase with a loan should be deductible when paid by an ESBT. Another commentator suggested that if interest paid on a loan to acquire S corporation stock is not deductible, it should be added to the basis of the acquired stock.

Because the purchase of S corporation stock increases the S portion, rather than the non-S portion, of the trust, interest expenses incurred in the purchase should be allocated to the S portion. These interest expenses would be deductible by the S portion only if they are ''administrative expenses'' under section 641(c)(2)(C)(iii). The IRS and the Treasury Department believe that, for purposes of section 641(c)(2)(C)(iii), ''administrative expenses'' include the traditional expenses necessary for the management and preservation of trust assets, but do not include expenses incurred to acquire additional assets. The final regulations, therefore, continue to provide that, in all cases, interest incurred to purchase S corporation stock is a nondeductible expense allocable to the S portion. Because there is no authority to permit nondeductible interest expenses to increase the basis of assets, the final regulations do not adopt this suggestion.

Tax Credit Carryovers

Section 641(c)(4) and the proposed regulations provide that if a trust is no longer an ESBT, any loss carryover or excess deductions of the S portion that are referred to in section 642(h) are taken into account by the entire trust or by the beneficiaries if the entire trust terminates. One commentator suggested that any tax credit carryovers of the S portion should receive similar treatment. Section 641(c)(4) permits the entire trust to take into account only those items specified in section 642(h), which does not include tax credit carryovers. The S portion's tax credit carryovers and any other items not listed in section 642(h) are forfeited once the trust is no longer an ESBT, just as they are upon the termination of a trust or estate. The final regulations, therefore, do not adopt the commentator's suggestion.

Distributions From the ESBT

One commentator suggested that the tax treatment of distributions to

beneficiaries in the proposed regulations is inconsistent with section 641(c)(1)(A), which provides that the portion of an ESBT consisting of the S corporation stock is treated as a separate trust. The proposed regulations provide that distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are, to the extent of the distributable net income of the non-S portion, deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. The commentator recommended that, because the S portion and the non-S portion are treated as separate trusts, the source of the distribution should determine its tax treatment.

The final regulations do not adopt the commentator's suggestion because section 641(c)(3) provides that section 641(c) does not affect the taxation of any distribution from the trust except for the exclusion of the S portion items from the distributable net income of the entire trust. Thus, the rules otherwise applicable to trust distributions apply to ESBTs.

ESBT Election

The proposed regulations provide that the ESBT election is filed with the service center where the trust files its income tax returns. The election to be a qualified subchapter S trust (QSST) is filed with the service center where the S corporation files its income tax returns. The preamble to the proposed regulations requested comments on whether the rules for filing the QSST election should be changed so the election is filed with the service center where the trust files its returns. One commentator suggested there should be consistent filing locations for QSST elections, ESBT elections, and conversions from QSST to ESBT or ESBT to QSST. The commentator, therefore, suggested that all these documents be filed with the service center(s) where the trust and the S corporation file their returns.

The final regulations provide that the ESBT election and the election to convert from an ESBT to a QSST or from a QSST to an ESBT are all filed with the service center where the S corporation files its income tax returns. Thus, the rule in the final regulations will establish a consistent filing location for QSST and ESBT elections and conversions.

One commentator suggested that grantor trusts should be permitted to make protective ESBT elections in light of the uncertain status of some trusts that may be grantor trusts under section 674. The IRS and the Treasury Department continue to believe that a conditional ESBT election that only becomes effective in the event the trust is not a wholly-owned grantor trust should not be available. A conditional ESBT election should not be allowed because the ESBT election must have a fixed effective date. If, in the absence of a conditional ESBT election, the trust is an ineligible shareholder, relief under section 1362(f) may be available for an S corporation. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

Expedited Section 1362(f) Relief

In several contexts, commentators requested some form of expedited relief if an S corporation's election is inadvertently ineffective or is inadvertently terminated. In all these situations, the S corporation may seek relief under section 1362(f). The facts and circumstances of a particular situation are considered in determining whether relief is available, and the procedures for obtaining this relief are well established.

Effect Under Section 1377 of Change in Status of a Trust

A commentator suggested that a trust's conversion to an ESBT should result in a complete termination of the trust's interest in the S corporation for purposes of section 1377(a)(2) because the incidence of taxation with respect to S corporation items will change as a result of the ESBT election. The proposed regulations provide that the election would result in a termination only if, prior to the election, the trust was described in section 1361(c)(2)(A)(ii) or (iii). The commentator also recommended that the regulations address the conversion from an ESBT to another type of trust and the availability of an election under § 1.1368–1(g) to treat the S corporation's taxable year as two separate years in the case of a qualifying disposition.

The final regulations do not adopt the suggestion that all conversions of a trust to an ESBT should be treated as a complete termination of the trust's interest in the S corporation for purposes of section 1377(a)(2). The final regulations expand on the rule in the proposed regulations to cover all types of conversions. Under this rule, conversion of a trust to an ESBT or a QSST does not result in the prior trust terminating its entire interest in the S corporation, unless the prior trust was described in section 1361(c)(2)(A)(ii) or (iii). When a trust described in section 1361(c)(2)(A)(ii) or (iii) converts to an ESBT or a QSST, the shareholders of the S corporation under section 1361(c)(2)(B) change from the estate of the deemed owner or testator to the PCBs of the ESBT, or the current income beneficiary of the QSST. When a trust changes from a wholly-owned grantor trust or QSST to an ESBT or from an ESBT to a QSST, the individuals who are shareholders of the S corporation under section 1361(c)(2)(B) remain the same. The election to terminate the taxable year provided in section 1377(a)(2) applies to the termination of a *shareholder's* interest in the S corporation.

Accordingly, it is appropriate to treat the conversion of a trust described in section 1361(c)(2)(A)(ii) or (iii) to an ESBT or QSST as a termination of the prior trust's interest in the S corporation, but not to treat other conversions to an ESBT or QSST as terminations. The election under § 1.1368–1(g) is also not available because the conversion of the trust is not a qualifying disposition.

Section 444 Elections

One commentator suggested that the final regulations permit an S corporation to retroactively reinstate a section 444 election that it had treated as terminated by operation of § 1.444–2T(a) (prior to the issuance of the temporary regulations) as a result of an ESBT or certain tax-exempt trusts becoming a shareholder of the corporation under the auspices of the 1996 Act. The commentator believes that failure to provide such relief would result in inequitable treatment of such S corporations because, under the rules of section 444, once their elections are terminated, they are precluded from again making a section 444 election.

The IRS and the Treasury Department believe that it is appropriate to allow S corporations under these circumstances to request that the IRS disregard the termination and permit the S corporation to continue to use the same fiscal year that it used previously under section 444. However, for reasons of administrative convenience, and in order to reduce the burden on taxpayers of having to file amended returns and make retroactive payments under section 7519, the prior termination will be disregarded only at the S corporation's request, and on a prospective basis.

The final regulations provide a procedure for such requests. To illustrate the procedure, assume that, prior to 1997, an S corporation had made a section 444 election to use a taxable year ending on September 30th.

On January 1, 1997, an ESBT acquired a shareholder interest in the S corporation. The S corporation treated its 444 election as terminated under § 1.444–2T(a) as a result of the ESBT's shareholder interest. The S corporation changed to its required taxable year for the short period beginning October 1, 1996, and ending December 31, 1996, and filed Form 1120S, ''U.S. Income Tax Return for an S Corporation,'' on the basis of a calendar year for all subsequent taxable years.

Under the final regulations, the S corporation may request that the IRS disregard the prior termination by filing Form 8716, ''Election to Have a Tax Year Other Than a Required Tax Year,'' with the appropriate Service Center by October 15, 2002, and by designating on the form ''CONTINUATION OF SECTION 444 ELECTION UNDER § 1.444–4.'' The Form 8716 must indicate that under the S corporation's prior section 444 election, it used a taxable year ending September 30th. The request will be effective for the taxable year beginning January 1, 2002. No amended returns, no retroactive payments under section 7519, and no returns under § 1.7519–2T(a) for previous years in which the S corporation used its required year are required as a result of the request. Moreover, the S corporation need not make a required payment under section 7519 for its taxable year ending September 30, 2002; its first required payment for the taxable year beginning October 1, 2002, is due on May 15, 2003. The S corporation will be required to file a return under § 1.7519–2T for each taxable year beginning on or after January 1, 2002.

Effective Dates

The portion of the regulations involving the taxation of the grantor, S, and non-S portions of an ESBT was proposed to be applicable for taxable years of ESBTs that end on or after December 29, 2000, the date that the proposed regulations were published in the **Federal Register**. The remainder of the regulations involving ESBTs was proposed to be applicable on or after the date that final regulations are published in the **Federal Register**. Several commentators expressed concerns about the proposed applicability with regard to the taxation of the grantor portion of an ESBT. One commentator suggested that the proposed effective date discriminated against trusts with a situs in Guam. Others suggested that the rules regarding taxation of the grantor portion should not be applicable before the date the final regulations are published. One commentator suggested that these rules should only apply either to trusts created after the final regulations are published or after a substantial transition period.

The IRS and the Treasury Department believe that the applicable date for the rules concerning the taxation of an ESBT with a grantor portion is reasonable and appropriate. These rules do not discriminate against trusts with a particular situs because they apply to all trusts wherever situated. In the case of a grantor trust that made an ESBT election, the tax treatment of the grantor portion set forth in the proposed regulations may be different from the tax treatment that the trust and the grantor had thought was available. The proposed regulations, however, were published before the end of the 2000 taxable year and before income from that taxable year was required to be included on any person's income tax return. Thus, prior to the filing of income tax returns for 2000, it was known that the income from the grantor portion of the trust was to be taken into account by the deemed owner, not by the trust. In some situations, the trust, rather than the deemed owner, may have made estimated tax payments. Recognizing that the payment of estimated tax by the trust might subject the deemed owner to a penalty for underpayment of estimated taxes, the IRS and the Treasury Department provided relief by issuing Notice 2001–25 (2001–13 I.R.B. 941). That Notice provides procedures for a trust to elect to have its estimated tax payments credited to the account of the deemed owner and provides that, for purposes of calculating any underpayment of estimated tax, income attributable to the S corporation was to be taken into account on the last day of the deemed owner's 2000 taxable year.

Some commentators were concerned that existing ESBTs with currently exercisable, broad powers of appointments have resulted in S corporations exceeding the shareholder limit and have caused the termination of the S corporations' elections. The regulations regarding the definition of PCBs are applicable only for taxable years of ESBTs that begin on or after May 14, 2002. Therefore, persons who may receive a distribution from an ESBT pursuant to a currently exercisable power of appointment will not be considered PCBs of the ESBT until the first day of the ESBT's first taxable year that begins on or after May 14, 2002, and the S corporation's election will not terminate before that date. In addition, under section 1361(e)(2) if the trust disposes of all its stock in the S corporation within 60 days after that date, the persons, who would first meet the definition of PCBs on that date, will not be PCBs and the S corporation's status will not be affected.

One commentator was concerned by the applicability date of the regulations involving the deductibility of state and local income taxes and administrative expenses. Section 641(c)(2)(C)(iii) provides that the S portion may take into account its allocable share of state and local income taxes and administrative expenses, but only to the extent provided in the regulations. The commentator noted that before final regulations are issued there is no authority for an ESBT to deduct any of these items. Therefore, the commentator requested that trusts be allowed to rely on the regulatory provisions regarding these items for taxable years beginning after December 31, 1996. The effective date provisions have been modified based on this suggestion.

Additional Provisions

The final regulations clarify that the basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately.

Effect on Other Documents

The following documents are superseded for taxable years of ESBTs beginning on and after May 14, 2002.

Notice 97–12 (1997–1 C.B. 385)
Notice 97–49 (1997–2 C.B. 304)
Rev. Proc. 98–23 (1998–1 C.B. 662)

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that (1) the estimated average burden per trust in complying with the collections of information in § 1.1361–1(m) is 1 hour, and (2) the requirement for S corporations to comply with § 1.444–4(c) will affect very few taxpayers and the associated burden is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C.

chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.444–4 is also issued under 26 U.S.C. 444(g). * * *

Par. 2. Section 1.444–4 is added to read as follows:

§ 1.444–4 Tiered structure.

(a) *Electing small business trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is treated as an electing small business trust under section 1361(e). An S corporation with an electing small business trust as a shareholder may make an election under section 444. This paragraph is applicable to taxable years beginning on and after December 29, 2000; however, taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1996.

(b) *Certain tax-exempt trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a). An S corporation with a trust as a shareholder that is described in section 401(a) or section 501(c)(3), and is exempt from taxation under section 501(a) may make an election under section 444. This paragraph is applicable to taxable years beginning on and after December 29, 2000; however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1997.

(c) *Certain terminations disregarded*—(1) *In general.* An S corporation that is described in this paragraph (c)(1) may request that a termination of its election under section 444 be disregarded, and that the S corporation be permitted to resume use of the year it previously elected under section 444, by following the procedures of paragraph (c)(2) of this section. An S corporation is described in this paragraph if the S corporation is otherwise qualified to make a section 444 election, and its previous election was terminated under § 1.444–2T(a) solely because—

(i) In the case of a taxable year beginning after December 31, 1996, a trust that is treated as an electing small business trust became a shareholder of such S corporation; or

(ii) In the case of a taxable year beginning after December 31, 1997, a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a) became a shareholder of such S corporation.

(2) *Procedure*—(i) *In general.* An S corporation described in paragraph (c)(1) of this section that wishes to make the request described in paragraph (c)(1) of this section must do so by filing Form 8716, ''Election To Have a Tax Year Other Than a Required Tax Year,'' and typing or printing legibly at the top of such form—''CONTINUATION OF SECTION 444 ELECTION UNDER § 1.444–4.'' In order to assist the Internal Revenue Service in updating the S corporation's account, on Line 5 the Box ''Changing to'' should be checked. Additionally, the election month indicated must be the last month of the S corporation's previously elected section 444 election year, and the effective year indicated must end in 2002.

(ii) *Time and place for filing Form 8716.* Such form must be filed on or before October 15, 2002, with the service center where the S corporation's returns of tax (Forms 1120S) are filed. In addition, a copy of the Form 8716 should be attached to the S corporation's short period Federal income tax return for the first election year beginning on or after January 1, 2002.

(3) *Effect of request*—(i) *Taxable years beginning on or after January 1, 2002.* An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will be permitted to resume use of the year it previously elected under section 444, commencing with its first taxable year beginning on or after January 1, 2002. Such S corporation will be required to file a return under § 1.7519–2T for each taxable year beginning on or after January 1, 2002. No payment under section 7519 will be due with respect to the first taxable year beginning on or after January 1, 2002. However, a required payment will be due on or before May 15, 2003, with respect to such S corporation's second continued section 444 election year that begins in calendar year 2002.

(ii) *Taxable years beginning prior to January 1, 2002.* An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will not be required to amend any prior Federal income tax returns, make any required payments under section 7519, or file any returns under § 1.7519–2T, with respect to taxable years beginning on or after the date the termination of its section 444 election was effective and prior to January 1, 2002.

(iii) *Section 7519: required payments and returns.* The Internal Revenue Service waives any requirement for an S corporation described in paragraph (c)(1) of this section to file the federal tax returns and make any required payments under section 7519 for years prior to the taxable year of continuation as described in paragraph (c)(3)(i) of this section, if for such years the S corporation filed its federal income tax returns on the basis of its required taxable year.

§ 1.444–4T [Removed]

Par. 3. Section 1.444–4T is removed.

Par. 4. Sections 1.641(c)–0 and 1.641(c)–1 are added to read as follows:

§ 1.641(c)–0 Table of contents.

This section lists the major captions contained in § 1.641(c)–1.

§ 1.641(c)–1 Electing small business trust.

(a) In general.
(b) Definitions.
(1) Grantor portion.
(2) S portion.
(3) Non-S portion.
(c) Taxation of grantor portion.
(d) Taxation of S portion.
(1) In general.

(2) Section 1366 amounts.
(3) Gains and losses on disposition of S stock.
(4) State and local income taxes and administrative expenses.
(e) Tax rates and exemption of S portion.
(1) Income tax rate.
(2) Alternative minimum tax exemption.
(f) Adjustments to basis of stock in the S portion under section 1367.
(g) Taxation of non-S portion.
(1) In general.
(2) Dividend income under section 1368(c)(2).
(3) Interest on installment obligations.
(4) Charitable deduction.
(h) Allocation of state and local income taxes and administration expenses.
(i) Treatment of distributions from the trust.
(j) Termination or revocation of ESBT election.
(k) Effective date.
(l) Examples.

§ 1.641(c)–1 Electing small business trust.

(a) *In general.* An electing small business trust (ESBT) within the meaning of section 1361(e) is treated as two separate trusts for purposes of chapter 1 of the Internal Revenue Code. The portion of an ESBT that consists of stock in one or more S corporations is treated as one trust. The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust. The grantor or another person may be treated as the owner of all or a portion of either or both such trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code. The ESBT is treated as a single trust for administrative purposes, such as having one taxpayer identification number and filing one tax return. *See* § 1.1361–1(m).

(b) *Definitions*—(1) *Grantor portion.* The grantor portion of an ESBT is the portion of the trust that is treated as owned by the grantor or another person under subpart E.

(2) *S portion.* The S portion of an ESBT is the portion of the trust that consists of S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(3) *Non-S portion.* The non-S portion of an ESBT is the portion of the trust that consists of all assets other than S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(c) *Taxation of grantor portion.* The grantor or another person who is treated as the owner of a portion of the ESBT includes in computing taxable income items of income, deductions, and credits against tax attributable to that portion of the ESBT under section 671.

(d) *Taxation of S portion*—(1) *In general.* The taxable income of the S portion is determined by taking into account only the items of income, loss, deduction, or credit specified in paragraphs (d)(2), (3), and (4) of this section, to the extent not attributable to the grantor portion.

(2) *Section 1366 amounts*—(i) *In general.* The S portion takes into account the items of income, loss, deduction, or credit that are taken into account by an S corporation shareholder pursuant to section 1366 and the regulations thereunder. Rules otherwise applicable to trusts apply in determining the extent to which any loss, deduction, or credit may be taken into account in determining the taxable income of the S portion. *See* § 1.1361–1(m)(3)(iv) for allocation of those items in the taxable year of the S corporation in which the trust is an ESBT for part of the year and an eligible shareholder under section 1361(a)(2)(A)(i) through (iv) for the rest of the year.

(ii) *Special rule for charitable contributions.* If a deduction described in paragraph (d)(2)(i) of this section is attributable to an amount of the S corporation's gross income that is paid by the S corporation for a charitable purpose specified in section 170(c) (without regard to section 170(c)(2)(A)), the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument within the meaning of section 642(c)(1). The limitations of section 681, regarding unrelated business income, apply in determining whether the contribution is deductible in computing the taxable income of the S portion.

(iii) *Multiple S corporations.* If an ESBT owns stock in more than one S corporation, items of income, loss, deduction, or credit from all the S corporations are aggregated for purposes of determining the S portion's taxable income.

(3) *Gains and losses on disposition of S stock*—(i) *In general.* The S portion takes into account any gain or loss from the disposition of S corporation stock. No deduction is allowed under section 1211(b)(1) and (2) for capital losses that exceed capital gains.

(ii) *Installment method.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the income recognized under this method is taken into account by the S portion. See paragraph (g)(3) of this section for the treatment of interest on the installment obligation. See § 1.1361–1(m)(5)(ii) regarding treatment of a trust as an ESBT upon the sale of all S corporation stock using the installment method.

(iii) *Distributions in excess of basis.* Gain recognized under section 1368(b)(2) from distributions in excess of the ESBT's basis in its S corporation stock is taken into account by the S portion.

(4) *State and local income taxes and administrative expenses*—(i) *In general.* State and local income taxes and administrative expenses directly related to the S portion and those allocated to that portion in accordance with paragraph (h) are taken into account by the S portion.

(ii) *Special rule for certain interest.* Interest paid by the trust on money borrowed by the trust to purchase stock in an S corporation is allocated to the S portion but is not a deductible administrative expense for purposes of determining the taxable income of the S portion.

(e) *Tax rates and exemption of S portion*—(1) *Income tax rate.* Except for capital gains, the highest marginal trust rate provided in section 1(e) is applied to the taxable income of the S portion. See section 1(h) for the rates that apply to the S portion's net capital gain.

(2) *Alternative minimum tax exemption.* The exemption amount of the S portion under section 55(d) is zero.

(f) *Adjustments to basis of stock in the S portion under section 1367.* The basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately with respect to each S corporation. Accordingly, items of income, loss, deduction, or credit of an S corporation that are taken into account by the ESBT under section 1366 can only result in an adjustment to the basis of the stock of that S corporation and cannot affect the basis in the stock of the other S corporations held by the ESBT.

(g) *Taxation of non-S portion*—(1) *In general.* The taxable income of the non-S portion is determined by taking into account all items of income, deduction, and credit to the extent not taken into account by either the grantor portion or the S portion. The items attributable to the non-S portion are taxed under subparts A through D of part I, subchapter J, chapter 1 of the Internal Revenue Code. The non-S portion may consist of more than one share pursuant to section 663(c).

(2) *Dividend income under section 1368(c)(2).* Any dividend income within the meaning of section 1368(c)(2) is includible in the gross income of the non-S portion.

(3) *Interest on installment obligations.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the interest on the installment obligation is includible in the gross income of the non-S portion. See paragraph (d)(3)(ii) of this section for the treatment of income from such a sale or disposition.

(4) *Charitable deduction.* For purposes of applying section 642(c)(1) to payments made by the trust for a charitable purpose, the amount of gross income of the trust is limited to the gross income of the non-S portion. See paragraph (d)(2)(ii) of this section for special rules concerning charitable contributions paid by the S corporation that are deemed to be paid by the S portion.

(h) *Allocation of state and local income taxes and administration expenses.* Whenever state and local income taxes or administration expenses relate to more than one portion of an ESBT, they must be allocated between or among the portions to which they relate. These items may be allocated in any manner that is reasonable in light of all the circumstances, including the terms of the governing instrument, applicable local law, and the practice of the trustee with respect to the trust if it is reasonable and consistent. The taxes and expenses apportioned to each portion of the ESBT are taken into account by that portion.

(i) *Treatment of distributions from the trust.* Distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. However, the amount of the deduction or inclusion cannot exceed the amount of the distributable net income of the non-S portion. Items of income, loss, deduction, or credit taken into account by the grantor portion or the S portion are excluded for purposes of determining the distributable net income of the non-S portion of the trust.

(j) *Termination or revocation of ESBT election.* If the ESBT election of the trust terminates pursuant to § 1.1361–1(m)(5) or the ESBT election is revoked pursuant to § 1.1361–1(m)(6), the rules contained in this section are thereafter not applicable to the trust. If, upon termination or revocation, the S portion has a net operating loss under section 172; a capital loss carryover under section 1212; or deductions in excess of gross income; then any such loss, carryover, or excess deductions shall be allowed as a deduction, in accordance with the regulations under section 642(h), to the trust, or to the beneficiaries succeeding to the property of the trust if the entire trust terminates.

(k) *Effective date.* This section generally is applicable for taxable years of ESBTs beginning on and after May 14, 2002. However, paragraphs (a), (b), (c), and (l) *Example 1* of this section are applicable for taxable years of ESBTs that end on and after December 29, 2000. ESBTs may apply paragraphs (d)(4) and (h) of this section for taxable years of ESBTs beginning after December 31, 1996.

(l) *Examples.* The following examples illustrate the rules of this section:

Example 1. Comprehensive example. (i) Trust has a valid ESBT election in effect. Under section 678, *B* is treated as the owner of a portion of Trust consisting of a 10% undivided fractional interest in Trust. No other person is treated as the owner of any other portion of Trust under subpart E. Trust owns stock in *X*, an S corporation, and in *Y*, a C corporation. During 2000, Trust receives a distribution from *X* of $5,100, of which $5,000 is applied against Trust's adjusted basis in the *X* stock in accordance with section 1368(c)(1) and $100 is a dividend under section 1368(c)(2). Trust makes no distributions to its beneficiaries during the year.

(ii) For 2000, Trust has the following items of income and deduction:

Ordinary income attributable to *X* under section 1366	$5,000
Dividend income from *Y*	$900
Dividend from *X* representing C corporation earnings and profits	$100
Total trust income	$6,000
Charitable contributions attributable to *X* under section 1366	$300
Trustee fees	$200
State and local income taxes	$100

(iii) Trust's items of income and deduction are divided into a grantor portion, an S portion, and a non-S portion for purposes of determining the taxation of those items. Income is allocated to each portion as follows:

B must take into account the items of income attributable to the grantor portion, that is, 10% of each item, as follows:

Ordinary income from *X*	$500
Dividend income from *Y*	$90
Dividend income from *X*	$10
Total grantor portion income	$600

The total income of the S portion is $4,500, determined as follows:

Ordinary income from *X*	$5,000
Less: Grantor portion	($500)
Total S portion income	$4,500

The total income of the non-S portion is $900 determined as follows:

Dividend income from *Y* (less grantor portion)	$810
Dividend income from *X* (less grantor portion)	$90
Total non-S portion income	$900

(iv) The administrative expenses and the state and local income taxes relate to all three portions and under state law would be allocated ratably to the $6,000 of trust income. Thus, these items would be allocated 10% (600/6000) to the grantor portion, 75% (4500/6000) to the S portion and 15% (900/6000) to the non-S portion.

(v) *B* must take into account the following deductions attributable to the grantor portion of the trust:

Charitable contributions from *X*	$30
Trustee fees	$20
State and local income taxes	$10

(vi) The taxable income of the S portion is $4,005, determined as follows:

Ordinary income from *X*	$4,500
Less: Charitable contributions from *X* (less grantor portion)	($270)
75% of trustee fees	($150)
75% of state and local income taxes	($75)
Taxable income of S portion	$4,005

(vii) The taxable income of the non-S portion is $755, determined as follows:

Dividend income from *Y*	$810
Dividend income from *X*	$90
Total non-S portion income	$900
Less: 15% of trustee fees	($30)
15% state and local income taxes	($15)
Personal exemption	($100)
Taxable income of non-S portion	$755

Example 2. Sale of S stock. Trust has a valid ESBT election in effect and owns stock in *X*, an S corporation. No person is treated as the owner of any portion of Trust under subpart E. In 2003, Trust sells all of its stock in *X* to a person who is unrelated to Trust and its beneficiaries and realizes a capital gain of $5,000. This gain is taken into account by the S portion and is taxed using the appropriate capital gain rate found in section 1(h).

Example 3. (i) Sale of S stock for an installment note. Assume the same facts as in *Example 2,* except that Trust sells its stock in *X* for a $400,000 installment note payable with stated interest over ten years. After the sale, Trust does not own any S corporation stock.

(ii) *Loss on installment sale.* Assume Trust's basis in its *X* stock was $500,000. Therefore, Trust sustains a capital loss of

$100,000 on the sale. Upon the sale, the S portion terminates and the excess loss, after being netted against the other items taken into account by the S portion, is made available to the entire trust as provided in section 641(c)(4).

(iii) *Gain on installment sale.* Assume Trust's basis in its *X* stock was $300,000 and that the $100,000 gain will be recognized under the installment method of section 453. Interest income will be recognized annually as part of the installment payments. The portion of the $100,000 gain recognized annually is taken into account by the S portion. However, the annual interest income is includible in the gross income of the non-S portion.

Example 4. Charitable lead annuity trust. Trust is a charitable lead annuity trust which is not treated as owned by the grantor or another person under subpart E. Trust acquires stock in *X*, an S corporation, and elects to be an ESBT. During the taxable year, pursuant to its terms, Trust pays $10,000 to a charitable organization described in section 170(c)(2). The non-S portion of Trust receives an income tax deduction for the charitable contribution under section 642(c) only to the extent the amount is paid out of the gross income of the non-S portion. To the extent the amount is paid from the S portion by distributing S corporation stock, no charitable deduction is available to the S portion.

Example 5. ESBT distributions. (i) As of January 1, 2002, Trust owns stock in *X*, a C corporation. No portion of Trust is treated as owned by the grantor or another person under subpart E. *X* elects to be an S corporation effective January 1, 2003, and Trust elects to be an ESBT effective January 1, 2003. On February 1, 2003, *X* makes an $8,000 distribution to Trust, of which $3,000 is treated as a dividend from accumulated earnings and profits under section 1368(c)(2) and the remainder is applied against Trust's basis in the *X* stock under section 1368(b). The trustee of Trust makes a distribution of $4,000 to Beneficiary during 2003. For 2003, Trust's share of *X*'s section 1366 items is $5,000 of ordinary income. For the year, Trust has no other income and no expenses or state or local taxes.

(ii) For 2003, Trust has $5,000 of taxable income in the S portion. This income is taxed to Trust at the maximum rate provided in section 1(e). Trust also has $3,000 of distributable net income (DNI) in the non-S portion. The non-S portion of Trust receives a distribution deduction under section 661(a) of $3,000, which represents the amount distributed to Beneficiary during the year ($4,000), not to exceed the amount of DNI ($3,000). Beneficiary must include this amount in gross income under section 662(a). As a result, the non-S portion has no taxable income.

Par. 5. Section 1.1361–0 is amended by adding entries for § 1.1361–1(j)(12) and (m) to read as follows:

§ 1.1361–0 Table of contents.

* * * * *

§ 1.1361–1 S corporation defined.

* * * * *

(j) * * *

(12) Converting a QSST to an ESBT.

* * * * *

(m) Electing small business trust (ESBT).

(1) Definition.

(2) ESBT election.

(3) Effect of ESBT election.

(4) Potential current beneficiaries.

(5) ESBT terminations.

(6) Revocation of ESBT election.

(7) Converting an ESBT to a QSST.

(8) Examples.

(9) Effective date.

* * * * *

Par. 6. Section 1.1361–1 is amended by:

1. Adding paragraphs (h)(1)(vi) and (h)(3)(i)(F).

2. Adding a sentence to the beginning of paragraph (h)(3)(ii) introductory text.

3. Adding paragraph (j)(12).

4. Adding a sentence to the end of paragraph (k)(2)(i).

5. Adding paragraph (m).

The additions read as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(h) * * *

(1) * * *

(vi) *Electing small business trusts.* An electing small business trust (ESBT) under section 1361(e). See paragraph (m) of this section for rules concerning ESBTs including the manner of making the election to be an ESBT under section 1361(e)(3).

* * * * *

(3) * * *

(i) * * *

(F) If S corporation stock is held by an ESBT, each potential current beneficiary is treated as a shareholder. However, if for any period there is no potential current beneficiary of the ESBT, the ESBT is treated as the shareholder during such period. See paragraph (m)(4) of this section for the definition of potential current beneficiary.

* * * * *

(ii) * * * *See* § 1.641(c)–1 for the rules for the taxation of an ESBT. * * *

* * * * *

(j) * * *

(12) *Converting a QSST to an ESBT.* For a trust that seeks to convert from a QSST to an ESBT, the consent of the Commissioner is hereby granted to revoke the QSST election as of the effective date of the ESBT election, if all the following requirements are met:

(i) The trust meets all of the requirements to be an ESBT under paragraph (m)(1) of this section except for the requirement under paragraph (m)(1)(iv)(A) of this section that the trust not have a QSST election in effect.

(ii) The trustee and the current income beneficiary of the trust sign the ESBT election. The ESBT election must be filed with the service center where the S corporation files its income tax return. This ESBT election must state at the top of the document ''ATTENTION ENTITY CONTROL—CONVERSION OF A QSST TO AN ESBT PURSUANT TO SECTION 1.1361–1(j)'' and include all information otherwise required for an ESBT election under paragraph (m)(2) of this section. A separate election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from an ESBT to a QSST within the 36-month period preceding the effective date of the new ESBT election.

(iv) The date on which the ESBT election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(k) * * *

(2) * * *

(i) * * * Paragraphs (h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), and (j)(12) of this section are applicable for taxable years beginning on and after May 14, 2002.

* * * * *

(m) *Electing small business trust (ESBT)*—(1) *Definition*—(i) *General rule.* An electing small business trust (ESBT) means any trust if it meets the following requirements: the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in section 170(c)(2) through (5), or an organization described in section 170(c)(1) that holds a contingent interest in such trust and is not a potential current beneficiary; no interest in the trust has been acquired by purchase; and the trustee of the trust makes a timely ESBT election for the trust.

(ii) *Qualified beneficiaries*—(A) *In general.* For purposes of this section, a beneficiary includes a person who has a present, remainder, or reversionary interest in the trust.

(B) *Distributee trusts.* A distributee trust is the beneficiary of the ESBT only if the distributee trust is an organization described in section 170(c)(2) or (3). In all other situations, any person who has a beneficial interest in a distributee trust

is a beneficiary of the ESBT. A distributee trust is a trust that receives or may receive a distribution from an ESBT, whether the rights to receive the distribution are fixed or contingent, or immediate or deferred.

(C) *Powers of appointment.* A person in whose favor a power of appointment could be exercised is not a beneficiary of an ESBT until the holder of the power of appointment actually exercises the power in favor of such person.

(D) *Nonresident aliens.* A nonresident alien as defined in section 7701(b)(1)(B) is an eligible beneficiary of an ESBT. However, see paragraph (m)(4)(i) and (m)(5)(iii) of this section if the nonresident alien is a potential current beneficiary of the ESBT (which would result in an ineligible shareholder and termination of the S corporation election).

(iii) *Interests acquired by purchase.* A trust does not qualify as an ESBT if any interest in the trust has been acquired by purchase. Generally, if a person acquires an interest in the trust and thereby becomes a beneficiary of the trust as defined in paragraph (m)(1)(ii)(A), and any portion of the basis in the acquired interest in the trust is determined under section 1012, such interest has been acquired by purchase. This includes a net gift of a beneficial interest in the trust, in which the person acquiring the beneficial interest pays the gift tax. The trust itself may acquire S corporation stock or other property by purchase or in a part-gift, part-sale transaction.

(iv) *Ineligible trusts.* An ESBT does not include—

(A) Any qualified subchapter S trust (as defined in section 1361(d)(3)) if an election under section 1361(d)(2) applies with respect to any corporation the stock of which is held by the trust;

(B) Any trust exempt from tax or not subject to tax under subtitle A; or

(C) Any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(2) *ESBT election*—(i) *In general.* The trustee of the trust must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of paragraph (m)(2)(ii) of this section. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must sign the election statement. If any one of several trustees can legally bind the trust, only one trustee needs to sign the election statement. Generally, only one ESBT election is made for the trust, regardless of the number of S corporations whose stock is held by the ESBT. However, if the ESBT holds stock in multiple S corporations that file in different service centers, the ESBT election must be filed with all the relevant service centers where the corporations file their income tax returns. This requirement applies only at the time of the initial ESBT election; if the ESBT later acquires stock in an S corporation which files its income tax return at a different service center, a new ESBT election is not required.

(ii) *Election statement.* The election statement must include—

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently owns stock;

(B) An identification of the election as an ESBT election made under section 1361(e)(3);

(C) The first date on which the trust owned stock in each S corporation;

(D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and

(E) Representations signed by the trustee stating that—

(*1*) The trust meets the definitional requirements of section 1361(e)(1); and

(*2*) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).

(iii) *Due date for ESBT election.* The ESBT election must be filed within the time requirements prescribed in paragraph (j)(6)(iii) of this section for filing a qualified subchapter S trust (QSST) election.

(iv) *Election by a trust described in section 1361(c)(2)(A)(ii) or (iii).* A trust that is a qualified S corporation shareholder under section 1361(c)(2)(A)(ii) or (iii) may elect ESBT treatment at any time during the 2-year period described in those sections or the 16-day-and-2-month period beginning on the date after the end of the 2-year period. If the trust makes an ineffective ESBT election, the trust will continue nevertheless to qualify as an eligible S corporation shareholder for the remainder of the period described in section 1361(c)(2)(A)(ii) or (iii).

(v) *No protective election.* A trust cannot make a conditional ESBT election that would be effective only in the event the trust fails to meet the requirements for an eligible trust described in section 1361(c)(2)(A)(i) through (iv). If a trust attempts to make such a conditional ESBT election and it fails to qualify as an eligible S corporation shareholder under section 1361(c)(2)(A)(i) through (iv), the S corporation election will be ineffective or will terminate because the corporation will have an ineligible shareholder. Relief may be available under section 1362(f) for an inadvertent ineffective S corporation election or an inadvertent S corporation election termination. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

(3) *Effect of ESBT election*—(i) *General rule.* If a trust makes a valid ESBT election, the trust will be treated as an ESBT for purposes of chapter 1 of the Internal Revenue Code as of the effective date of the ESBT election.

(ii) *Employer Identification Number.* An ESBT has only one employer identification number (EIN). If an existing trust makes an ESBT election, the trust continues to use the EIN it currently uses.

(iii) *Taxable year.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the ESBT election does not cause the trust's taxable year to close. The termination of the ESBT election (including a termination caused by a conversion of the ESBT to a QSST) other than on the last day of the trust's taxable year also does not cause the trust's taxable year to close. In either case, the trust files one tax return for the taxable year.

(iv) *Allocation of S corporation items.* If, during the taxable year of an S corporation, a trust is an ESBT for part of the year and an eligible shareholder under section 1361(c)(2)(A)(i) through (iv) for the rest of the year, the S corporation items are allocated between the two types of trusts under section 1377(a). See § 1.1377–1(a)(2)(iii).

(v) *Estimated taxes.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the trust is considered one trust for purposes of estimated taxes under section 6654.

(4) *Potential current beneficiaries*—(i) *In general.* For purposes of determining whether a corporation is a small business corporation within the meaning of section 1361(b)(1), each potential current beneficiary of an ESBT generally is treated as a shareholder of the corporation. Subject to the provisions of this paragraph (m)(4), a potential current beneficiary generally is, with respect to any period, any person who at any time during such period is entitled to, or in the discretion of any person may receive, a distribution from the principal or income of the trust. A person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of the trust. No

person is treated as a potential current beneficiary solely because that person holds any future interest in the trust.

(ii) *Grantor trusts.* If all or a portion of an ESBT is treated as owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, such owner is a potential current beneficiary in addition to persons described in paragraph (m)(4)(i) of this section.

(iii) *Special rule for dispositions of stock.* Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of its S corporation stock, any person who first met the definition of a potential current beneficiary during the 60-day period ending on the date of such disposition is not a potential current beneficiary and thus is not a shareholder of that corporation.

(iv) *Distributee trusts*—(A) *In general.* This paragraph (m)(4)(iv) contains the rules for determining who are the potential current beneficiaries of an ESBT if a distributee trust becomes entitled to, or at the discretion of any person, may receive a distribution from principal or income of an ESBT. A distributee trust does not include a trust that is not currently in existence. For this purpose, a trust is not currently in existence if the trust has no assets and no items of income, loss, deduction, or credit. Thus, if a trust instrument provides for a trust to be funded at some future time, the future trust is not currently a distributee trust.

(B) If the distributee trust is not a trust described in section 1361(c)(2)(A), then the distributee trust is the potential current beneficiary of the ESBT and the corporation's S corporation election terminates.

(C) If the distributee trust is a trust described in section 1361(c)(2)(A), the persons who would be its potential current beneficiaries (as defined in paragraphs (m)(4)(i) and (ii) of this section) if the distributee trust were an ESBT are treated as the potential current beneficiaries of the ESBT. Notwithstanding the preceding sentence, however, if the distributee trust is a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate described in section 1361(c)(2)(B) (ii) or (iii) is treated as the potential current beneficiary of the ESBT for the 2-year period during which such trust would be permitted as a shareholder.

(D) For the purposes of paragraph (m)(4)(iv)(C) of this section, a trust will be deemed to be described in section 1361(c)(2)(A) if such trust would qualify for a QSST election under section 1361(d) or an ESBT election under section 1361(e) if it owned S corporation stock.

(v) *Contingent distributions.* A person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event (such as the death of the holder of a power of appointment) is not a potential current beneficiary until such time or the occurrence of such event.

(vi) *Currently exercisable powers of appointment*—(A) *In general.* A person to whom a distribution is or may be made during a period pursuant to a power of appointment is a potential current beneficiary. Thus, if any person has a lifetime power of appointment that would permit distributions from the trust to be made to more than 75 persons, the corporation's S corporation election will terminate because the number of potential current beneficiaries will exceed the 75-shareholder limit of section 1361(b)(1)(A). Also, the S corporation election will terminate if the currently exercisable power of appointment allows distributions to be made to an ineligible shareholder as defined in section 1361(b)(1)(B) and (C).

(B) *Waiver or release.* If the holder of a power of appointment permanently releases the power in a manner that is valid under applicable local law, the persons that would be potential current beneficiaries solely because of the power will not be potential current beneficiaries after the effective date of the release. An attempt to temporarily waive, release, or limit a currently exercisable power of appointment will be ignored in determining who are potential current beneficiaries of the trust.

(vii) *Number of shareholders.* Each potential current beneficiary of the ESBT, as defined in paragraphs (m)(4)(i) through (vi) of this section, is counted as a shareholder of any S corporation whose stock is owned by the ESBT. During any period in which the ESBT has no potential current beneficiaries, the ESBT is counted as the shareholder. A person is counted as only one shareholder of an S corporation even though that person may be treated as a shareholder of the S corporation by direct ownership and through one or more eligible trusts described in section 1361(c)(2)(A). Thus, for example, if a person owns stock in an S corporation and is a potential current beneficiary of an ESBT that owns stock in the same S corporation, that person is counted as one shareholder of the S corporation. Similarly, if a husband owns stock in an S corporation and his wife is a potential current beneficiary of an ESBT that owns stock in the same S corporation, the husband and wife will be counted as one shareholder of the S corporation.

(viii) *Miscellaneous.* Payments made by an ESBT to a third party on behalf of a beneficiary are considered to be payments made directly to the beneficiary. The right of a beneficiary to assign the beneficiary's interest to a third party does not result in the third party being a potential current beneficiary until that interest is actually assigned.

(5) *ESBT terminations*—(i) *Ceasing to meet ESBT requirements.* A trust ceases to be an ESBT on the first day the trust fails to meet the definition of an ESBT under section 1361(e). The last day the trust is treated as an ESBT is the day before the date on which the trust fails to meet the definition of an ESBT.

(ii) *Disposition of S stock.* In general, a trust ceases to be an ESBT on the first day following the day the trust disposes of all S corporation stock. However, if the trust is using the installment method to report income from the sale or disposition of its stock in an S corporation, the trust ceases to be an ESBT on the day following the earlier of the day the last installment payment is received by the trust or the day the trust disposes of the installment obligation.

(iii) *Potential current beneficiaries that are ineligible shareholders.* If a potential current beneficiary of an ESBT is not an eligible shareholder of a small business corporation within the meaning of section 1361(b)(1), the S corporation election terminates. For example, the S corporation election will terminate if a nonresident alien becomes a potential current beneficiary of an ESBT. Such a potential current beneficiary is treated as an ineligible shareholder beginning on the day such person becomes a potential current beneficiary, and the S corporation election terminates on that date. However, *see* the special rule of paragraph (m)(4)(iii) of this section. If the S corporation election terminates, relief may be available under section 1362(f).

(6) *Revocation of ESBT election.* An ESBT election may be revoked only with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure.

(7) *Converting an ESBT to a QSST.* For a trust that seeks to convert from an ESBT to a QSST, the consent of the Commissioner is hereby granted to revoke the ESBT election as of the effective date of the QSST election, if all the following requirements are met:

(i) The trust meets all of the requirements to be a QSST under section 1361(d).

(ii) The trustee and the current income beneficiary of the trust sign the QSST election. The QSST election must be filed with the service center where the S corporation files its income tax return. This QSST election must state at the top of the document ATTENTION ENTITY CONTROL—CONVERSION OF AN ESBT TO A QSST PURSUANT TO SECTION 1.1361–1(m)'' and include all information otherwise required for a QSST election under § 1.1361–1(j)(6). A separate QSST election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from a QSST to an ESBT within the 36-month period preceding the effective date of the new QSST election.

(iv) The date on which the QSST election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(8) *Examples.* The provisions of this paragraph (m) are illustrated by the following examples in which it is assumed, unless otherwise specified, that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) *ESBT election with section 663(c) separate shares.* On January 1, 2003, *M* contributes S corporation stock to Trust for the benefit of *M*'s three children *A, B,* and *C.* Pursuant to section 663(c), each of Trust's separate shares for *A, B,* and *C* will be treated as separate trusts for purposes of determining the amount of distributable net income (DNI) in the application of sections 661 and 662. On January 15, 2003, the trustee of Trust files a valid ESBT election for Trust effective January 1, 2003. Trust will be treated as a single ESBT and will have a single S portion taxable under section 641(c).

(ii) *ESBT acquires stock of an additional S corporation.* On February 15, 2003, Trust acquires stock of an additional S corporation. Because Trust is already an ESBT, Trust does not need to make an additional ESBT election.

(iii) *Section 663(c) shares of ESBT convert to separate QSSTs.* Effective January 1, 2004, *A, B, C,* and Trust's trustee elect to convert each separate share of Trust into a separate QSST pursuant to paragraph (m)(7) of this section. For each separate share, they file a separate election for each S corporation whose stock is held by Trust. Each separate share will be treated as a separate QSST.

Example 2. (i) *Invalid potential current beneficiary.* Effective January 1, 2003, Trust makes a valid ESBT election. On January 1, 2004, *A,* a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within 60 days after January 1, 2004. As of January 1, 2004, *A* is a potential current beneficiary of Trust and therefore is treated as a shareholder of the S corporation. Because *A* is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2004. Relief may be available under section 1362(f).

(ii) *Invalid potential current beneficiary and disposition of S stock.* Assume the same facts as in *Example 2* (i) except that within 60 days after January 1, 2004, trustee of Trust disposes of all Trust's S corporation stock. *A* is not considered a potential current beneficiary of Trust and therefore is not treated as a shareholder of any S corporation in which Trust previously held stock.

Example 3. Subpart E trust. *M* transfers stock in *X,* an S corporation, and other assets to Trust for the benefit of *B* and *B*'s siblings. *M* retains no powers or interest in Trust. Under section 678(a), *B* is treated as the owner of a portion of Trust that includes a portion of the *X* stock. No beneficiary has acquired any portion of his or her interest in Trust by purchase, and Trust is not an ineligible trust under paragraph (m)(1)(iv) of this section. Trust is eligible to make an ESBT election.

Example 4. Subpart E trust continuing after grantor's death. On January 1, 2003, M transfers stock in *X,* an S corporation, and other assets to Trust. Under the terms of Trust, the trustee of Trust has complete discretion to distribute the income or principal to *M* during *M*'s lifetime and to *M*'s children upon *M*'s death. During *M*'s life, *M* is treated as the owner of Trust under section 677. The trustee of Trust makes a valid election to treat Trust as an ESBT effective January 1, 2003. On March 28, 2004, M dies. Under applicable local law, Trust does not terminate on *M*'s death. Trust continues to be an ESBT after *M*'s death, and no additional ESBT election needs to be filed for Trust after *M*'s death.

Example 5. Potential current beneficiaries and distributee trust holding S corporation stock. Trust-1 has a valid ESBT election in effect. The trustee of Trust-1 has the power to make distributions to *A* directly or to any trust created for the benefit of *A.* On January 1, 2003, *M* creates Trust-2 for the benefit of *A.* Also on January 1, 2003, the trustee of Trust-1 distributes some S corporation stock to Trust-2. *A,* as the current income beneficiary of Trust-2, makes a timely and effective election to treat Trust-2 as a QSST. Because Trust-2 is a valid S corporation shareholder, the distribution to Trust-2 does not terminate the ESBT election of Trust-1. Trust-2 itself will not be counted toward the 75-shareholder limit of section 1361(b)(1)(A). Additionally, because *A* is already counted as an S corporation shareholder because of *A*'s status as a potential current income beneficiary of Trust-1, *A* is not counted again by reason of *A*'s status as the deemed owner of Trust-2.

Example 6. Potential current beneficiaries and distributee trust not holding S corporation stock. (i) *Distributee trust that would itself qualify as an ESBT.* Trust-1 holds stock in *X,* an S corporation, and has a valid ESBT election in effect. Under the terms of Trust-1, the trustee has discretion to make distributions to *A, B,* and Trust-2, a trust for the benefit of *C, D,* and *E.* Trust-2 would qualify to be an ESBT, but it owns no S corporation stock and has made no ESBT election. Under paragraph (m)(4)(iv) of this section, Trust-2's potential current beneficiaries are treated as the potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Thus, *A, B, C, D,* and *E* are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Trust-2 itself will not be counted as a shareholder of Trust-1 for purposes of section 1361(b)(1).

(ii) *Distributee trust that would not qualify as an ESBT or a QSST.* Assume the same facts as in paragraph (i) of this *Example 6* except that *D* is a nonresident alien. Trust-2 would not be eligible to make an ESBT or QSST election if it owned S corporation stock and therefore Trust-2 is a potential current beneficiary of Trust-1. Since Trust-2 is not an eligible shareholder, *X*'s S corporation election terminates.

(iii) *Distributee trust that is a section 1361(c)(2)(A)(ii) trust.* Assume the same facts as in paragraph (i) of this *Example 6* except that Trust-2 is a trust treated as owned by *A* under section 676 because *A* has the power to revoke Trust-2 at any time prior to *A*'s death. On January 1, 2003, *A* dies. Because Trust-2 is a trust described in section 1361(c)(2)(A)(ii) during the 2-year period beginning on the day of *A*'s death, under paragraph (m)(4)(iv)(C) of this section, Trust-2's only potential current beneficiary is the person listed in section 1361(c)(2)(B)(ii), *A*'s estate. Thus, *B* and *A*'s estate are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1).

Example 7. Potential current beneficiaries and powers of appointment. *M* creates Trust for the benefit of *A. A* also has a currently exercisable power to appoint income or principal to anyone except *A, A*'s creditors, *A*'s estate, and the creditors of *A*'s estate. The potential current beneficiaries of Trust will be *A* and all other persons except for *A*'s creditors, *A*'s estate, and the creditors of *A*'s estate. This number will exceed the 75-shareholder limit of section 1361(b)(1)(A). If Trust holds S corporation stock, the corporation's S election will terminate.

(9) *Effective date.* This paragraph (m) is applicable for taxable years of ESBTs beginning on and after May 14, 2002.

Par. 7. Section 1.1362–6 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.1362–6 Election and consents.

* * * * *

(b) * * *

(2) * * *

(iv) *Trusts.* In the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trust described in section 1361(c)(2)(A)(v) (ESBT)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election. When stock of the corporation is held by a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property. See paragraph (b)(2)(i) of this section for rules concerning community interests in S corporation stock. In the case of an ESBT, the trustee and the owner of any portion of the trust that consists of the stock in one or more S corporations under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code must consent to the S corporation election. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

* * * * *

Par. 8. Section 1.1362–7 is amended by:

1. Revising the section heading.

2. Adding a sentence to the end of paragraph (a).

The revision and addition read as follows:

§ 1.1362–7 Effective dates.

(a) * * * Section 1.1362–6(b)(2)(iv) is applicable for taxable years beginning on and after May 14, 2002.

* * * * *

Par. 9. Section 1.1377–0 is amended by adding an entry for § 1.1377–1(a)(2)(iii) to read as follows:

§ 1.1377–0 Table of contents.

* * * * *

§ 1.1377–1 Pro rata share.

(a) * * *

(2) * * *

(iii) Shareholder trust conversions.

* * * * *

Par. 10. Section 1.1377–1 is amended by:

1. Adding paragraph (a)(2)(iii).

2. Adding *Example 3* to paragraph (c).

The additions read as follows:

§ 1.1377–1 Pro rata share.

(a) * * *

(2) * * *

(iii) Shareholder trust conversions. If, during the taxable year of an S corporation, a trust that is an eligible shareholder of the S corporation converts from a trust described in section 1361(c)(2)(A)(i), (ii), (iii), or (v) for the first part of the year to a trust described in a different subpart of section 1361(c)(2)(A)(i), (ii), or (v) for the remainder of the year, the trust's share of the S corporation items is allocated between the two types of trusts. The first day that a qualified subchapter S trust (QSST) or an electing small business trust (ESBT) is treated as an S corporation shareholder is the effective date of the QSST or ESBT election. Upon the conversion, the trust is not treated as terminating its entire interest in the S corporation for purposes of paragraph (b) of this section, unless the trust was a trust described in section 1361(c)(2)(A)(ii) or (iii) before the conversion.

* * * * *

(c) * * *

Example 3. Effect of conversion of a qualified subchapter S trust (QSST) to an electing small business trust (ESBT). (i) On January 1, 2003, Trust receives stock of S corporation. Trust's current income beneficiary makes a timely QSST election under section 1361(d)(2), effective January 1, 2003. Subsequently, the trustee and current income beneficiary of Trust elect, pursuant to § 1.1361–1(j)(12), to terminate the QSST election and convert to an ESBT, effective July 1, 2004. The taxable year of S corporation is the calendar year. In 2004, Trust's pro rata share of S corporation's nonseparately computed income is $100,000. (ii) For purposes of computing the income allocable to the QSST and to the ESBT, Trust is treated as a QSST through June 30, 2004, and Trust is treated as an ESBT beginning July 1, 2004. Pursuant to section 1377(a)(1), the pro rata share of S corporation income allocated to the QSST is $49,727 ($100,000 x 182 days/366 days), and the pro rata share of S corporation income allocated to the ESBT is $50,273 ($100,000 x 184 days/366 days).

Par. 11. Section 1.1377–3 is revised to read as follows:

§ 1.1377–3 Effective dates.

Section 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after December 31, 1996, except that § 1.1377–1(a)(2)(iii), and (c) *Example 3* are applicable for taxable years beginning on and after May 14, 2002.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. In § 602.101, paragraph (b) is amended by adding an entry for 1.444–4 and revising the entry for 1.1361–1 in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.444–4	1545–1591
* * * * *	
1.1361–1	1545–0731 1545–1591
* * * * *	

Approved: May 3, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Pamela Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–11791 Filed 5–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Disclosure of Records; Freedom of Information Act and Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending its regulations concerning the Freedom of Information Act (FOIA), and the Privacy Act, (Privacy Act), by revising regulations to specify new addresses for the Bureau of the Public Debt. We are also identifying a new official responsible for administrative appeals of initial determinations.

EFFECTIVE DATE: May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692, *Edward.Gronseth@bpd.treas.gov* or Elizabeth S. Gracia, Senior Attorney, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692, *Lisa.Gracia@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has decided to move its FOIA and Privacy Act program responsibilities to Parkersburg, West Virginia. We are providing the proper addresses where the public may

send the following: (a) Initial FOIA requests, (b) Privacy Act requests for notification, access to records, accountings of disclosure, and amendment of records, (c) FOIA and Privacy Act administrative appeals of initial determinations, and (d) service of process.

Also, we have identified the new official responsible for reviewing FOIA administrative appeals of initial determinations to deny records and for making appellate decisions on initial determinations refusing amendment of records under the Privacy Act. The existing regulations name the ''Commissioner of the Public Debt'' as the reviewing official. We have determined that the reviewing official should be changed to the ''Executive Director, Administrative Resource Center, Bureau of the Public Debt.''

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for us to implement internal requirements for complying with FOIA and the Privacy Act. Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary. We find good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 1

Freedom of Information, Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart A—Freedom of Information Act

2. Amend 31 CFR part 1, subpart A, Appendix I-Bureau of the Public Debt to revise paragraphs 3, 4, and 5 to read as follows:

Appendix I-Bureau of the Public Debt

* * * * *

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to: Freedom of Information Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Executive Director, Administrative Resource Center, Bureau of the Public Debt. Appeals may be sent to: Freedom of Information Act Appeal, Executive Director, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location: Chief Counsel's Office, Bureau of the Public Debt, 200 Third Street, Room G–15, Parkersburg, WV 26106–1328.

* * * * *

Subpart C—Privacy Act

3. Amend 31 CFR part 1, Subpart C, APPENDIX I–BUREAU OF THE PUBLIC DEBT, paragraph 2, by revising the last sentence to read as follows:

2.* * *Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. Amend 31 CFR part 1, subpart C, APPENDIX I–BUREAU OF THE PUBLIC DEBT, paragraph 3, by removing in the last sentence, ''Information Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street NW., Room 553, Washington, DC 20239.'' and adding in its place ''Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.''

5. Amend 31 CFR part 1, subpart C, APPENDIX I—BUREAU OF THE PUBLIC DEBT, paragraph 4 as follows:

a. Remove ''Commissioner of the Public Debt'' and add in its place ''Executive Director, Administrative Resource Center, Bureau of the Public Debt;''

b. Remove ''999 E Street NW., Room 503, Washington, DC 20239.'' and add in its place ''200 Third Street, Room G–15, Parkersburg, WV 26106–1328.''

6. Amend 31 CFR part 1, subpart C, APPENDIX I—BUREAU OF THE PUBLIC DEBT, paragraph 6, by removing ''999 E Street NW., Room 503, Washington, DC 20239.'' and adding in its place ''200 Third Street, Room G–15, Parkersburg, WV 26106–1328.''

Dated: April 15, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–11885 Filed 5–13–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

[Docket No. 02–06]

RIN 1557–AB83

Office of the Comptroller of the Currency; Privacy Act of 1974; Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) and the Department of the Treasury (Department) issue a final rule to exempt five OCC systems of records from certain provisions of the Privacy Act. The OCC and the Department also issue a technical amendment made necessary by the renumbering and renaming of one revised system of records that previously had been exempted from certain provisions of the Privacy Act.

EFFECTIVE DATE: May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Hansen, Assistant Director, or Ellen S. Warwick, Special Counsel, Administrative & Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: On October 26, 2001, the OCC, with the concurrence of the Department, published a notice of proposed rulemaking to exempt five systems of records from certain provisions of the Privacy Act of 1974, as amended (66 FR 54175–54178, October 26, 2001). This notice of proposed rulemaking was published in the same **Federal Register** in which the OCC published notices of five new Privacy Act systems of records (66 FR 54327–54333) and proposed alterations to six Privacy Act systems of records (66 FR 54333–54340). The notice of proposed rulemaking reflected

that three of the new systems of records would be exempted from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), 552a(k)(2), or both. These systems were: (1) Treasury/Comptroller .100-Enforcement Action Report System; (2) Treasury/Comptroller .120-Bank Fraud Information System; and (3) Treasury Comptroller .220-Section 914 Tracking System. This notice also reflected that two of the five altered systems of records would also be exempted from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), 552a(k)(2), or both. These systems were: (1) Treasury/Comptroller .016-Litigation Information System, to be renumbered Treasury/Comptroller .510; and (2) Treasury/Comptroller .004-Consumer Complaint Inquiry and Information System, to be renumbered Treasury/Comptroller .600.

The proposed rule requested that public comments be sent to the Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Washington, DC 20219, no later than November 26, 2001.

The OCC did not receive comments on the proposed rule. Accordingly, the OCC and the Department are hereby giving notice that the following systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2): (1) Treasury/Comptroller .120-Bank Fraud Information System; and (2) Treasury/Comptroller .510-Litigation Information System. The provisions of the Privacy Act from which exemption is claimed for these systems pursuant to 5 U.S.C. 552a(j)(2) are: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(1), (2), and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(f); and 5 U.S.C. 552a(g).

Additionally, the following systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): (1) Treasury/Comptroller .100-Enforcement Action Report System; (2) Treasury/Comptroller .120-Bank Fraud Information System; (3) Treasury/Comptroller .220-Section 914 Tracking System; (4) Treasury/Comptroller .510-Litigation Information System; and (5) Treasury/Comptroller .600-Consumer Complaint Inquiry and Information System. The provisions of the Privacy Act from which exemption is claimed for these five systems pursuant to 5 U.S.C. 552a(k)(2) are: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(4)(G), (H), and (I); and 5 U.S.C. 552a(f).

Finally, a technical amendment to the Department's regulation is issued. This amendment relates to a former system of records, *i.e.,* Treasury/Comptroller .013-Enforcement and Compliance Information System, for which notice of proposed revisions, including the renumbering and renaming of the system, was provided on October 26, 2001 (66 FR 54333–54340). The technical amendment removes the former number and name of this revised system from the Department's regulation and replaces it with the system's revised number and name, Treasury/Comptroller .110–Reports of Suspicious Activities.

This rule takes effect immediately upon publication in the **Federal Register**. The rule imposes no new requirements on national banks or any member of the public [1] but rather is one means by which the OCC and the Department comply with the Privacy Act. The OCC and the Department find that an immediate effective date will not result in any burden or inconvenience to national banks or members of the public, who have already had adequate notice of the changes contained in the rule.

Accordingly, the OCC and the Department find good cause to conclude that delaying the effective date of this rule is unnecessary. *See* 5 U.S.C. 553 (Administrative Procedure Act delayed effective date provision).

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the OCC and the Department certify that the rule will not have a significant economic impact on a substantial number of small entities and publish their certification and a short, explanatory statement in the **Federal Register** along with the rule.

Pursuant to section 605(b) of the RFA, the OCC and the Department hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule affects only internal agency administration and imposes no duties, obligations, or costs on entities of any size. Accordingly, a regulatory flexibility analysis is not needed.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC and the Department have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and the Department have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As noted above, the final rule adds no new requirements.

Executive Order 12866

The OCC and the Department have determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects

Privacy.

Part 1, subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended as follows:

(a) Paragraph (c)(1)(iii) is amended by removing ''CC .013 Enforcement and Compliance Information System'' from the table.

(b) Paragraph (c)(1)(iii) is amended by adding ''CC .110 Reports of Suspicious Activities,'' ''CC .120 Bank Fraud Information System,'' and ''CC .510 Litigation Information System'' to the table in numerical order.

(c) Paragraph (g)(1)(iii) is amended by removing ''CC .013 Enforcement and Compliance Information System'' from the table.

(d) Paragraph (g)(1)(iii) is amended by adding ''CC .100 Enforcement Action Report System,'' ''CC .110 Reports of Suspicious Activities,'' ''CC .120 Bank Fraud Information System,'' ''CC .220 Section 914 Tracking System,'' ''CC .510 Litigation Information System,'' and ''CC .600 Consumer Complaint Inquiry

[1] For this reason, the delayed effective date provision of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, does not apply.

and Information System'' to the table in numerical order.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

(c) * * *
(1) * * *
(iii) * * *

Number	System name
CC .110	Reports of Suspicious Activities.
CC. 120	Bank Fraud Information System.
CC .510	Litigation Information System.

* * * * *

(g) * * *
(1) * * *
(iii) * * *

Number	System name
* * * * *	
CC. 100	Enforcement Action Report System.
CC. 110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Section 914 Tracking System.
CC .510	Litigation Information System.
CC .600	Consumer Complaint and Inquiry Information System.
* * * * *	

Dated: April 22, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–11886 Filed 5–13–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL02

Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 2001–02 academic year should be increased by 4.7% over the rates payable for the 2000–01 academic year. The regulations dealing with these rates are amended accordingly.

DATES: Effective Date: May 14, 2002.

Applicability Date: The changes in rates are applied retroactively to October 1, 2001, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service (225), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4.7% in the 2000–01 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4.7% increase in the rates payable in the 2001–02 academic year, including changes in § 21.5820 to remove unnecessary provisions that were previously needed to compensate for rounding. Other nonsubstantive changes are made for the purpose of clarification.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30-day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Number

There is no Catalog of Federal Domestic Assistance number for the program affected by the regulations.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: May 2, 2002.

John A. Van Alstyne,

Lieutenant General, USA, Deputy Assistant Secretary, (Military Personnel Policy) Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, continues to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

2. Section 21.5820 is amended by:

a. In paragraph (b)(1), removing ''2000–01'' and adding, in its place, ''2001–02''; and by removing ''$3,524'' and adding, in its place, ''$3,690'';

b. In paragraph (b)(2)(ii), removing ''2000–01'' and adding, in its place, ''2001–02'';

c. In paragraph (b)(2)(ii)(A), removing ''$391.56'' and adding, in its place, ''$410.00'', and by removing ''$195.78'' and adding, in its place, ''$205.00'';

d. In paragraph (b)(2)(ii)(B), removing ''$13.05'' and adding, in its place, ''$13.67'', and by removing ''$6.53'' and adding, in its place ''$6.83'';

e. In paragraph (b)(3)(ii) introductory text, removing ''2000–01'' and adding, in its place, ''2001–02'';

f. In paragraph (b)(3)(ii)(A), removing ''$391.56'' and adding, in its place, ''$410.00''; and by removing ''$195.78'' and adding, in its place, ''$205.00'';

g. In paragraph (b)(3)(ii)(B), removing ''$13.05'' and adding, in its place, ''$13.67'', and by removing ''$6.53'', and adding, in its place, ''$6.83''; and

h. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

The revisions read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) Adding the two results.

* * * * *

(3) * * *

(ii) * * *

(C) Adding the two results; and

* * * * *

§ 21.5822 [Amended]

3. Section 21.5822 is amended by:

a. In paragraph (b)(1)(i), removing ''$878'' and adding, in its place, ''$919''; and by removing ''2000–01'' and adding, in its place, ''2001–02'';

b. In paragraph (b)(1)(ii), removing ''$439'' and adding, in its place, ''$459.50''; and by removing ''2000–01'' and adding, in its place, ''2001–02'';

c. In paragraph (b)(2)(i), removing ''2000–01'' and adding, in its place, ''2001–02''; and by removing ''$878'' and adding, in its place, ''$919''; and

d. In paragraph (b)(2)(ii), removing ''2000–01'' and adding, in its place, ''2001–02''; and by removing ''$439'' and adding, in its place, ''$459.50''.

[FR Doc. 02–11989 Filed 5–13–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 260–0339a; FRL–7174–5]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Tehama County Air Pollution Control District (TCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from industrial, institutional, and commercial boilers, steam generators, process heaters, and stationary gas turbines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 15, 2002, without further notice, unless EPA receives adverse comments by June 13, 2002. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Tehama County Air pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96008–0038.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule Title	Adopted	Submitted
TCAPCD	4:31	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	01/29/02	02/08/02

TABLE 1.—SUBMITTED RULES—Continued

Local agency	Rule #	Rule Title	Adopted	Submitted
TCAPCD	4:37	Stationary Gas Turbines	01/29/02	02/08/02

On March 8, 2002, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

On September 19, 2000 (65 FR 56486), EPA finalized limited approval and limited disapproval of a previous version of these rules. TCAPCD adopted the revisions of these rules on January 29, 2002, and CARB submitted them to us on February 8, 2002. We are acting on the revised version of these rules.

C. What Is the Purpose of the Submitted Rules?

Rule 4:31 establishes nitrogen oxide (NO_X) and carbon monoxide (CO) emission limits for industrial, institutional, and commercial boilers, steam generators, and process heaters. Rule 4:37 establishes nitrogen oxide (NO_X) emission limits for the operation of gas and liquid fueled turbines of greater than 0.3 megawatt (MW) output.

On September 19, 2000, the EPA published a limited approval and limited disapproval of a previous version of rules 4:31 and 4:37, because the rules improved the State Implementation Plan (SIP) overall but some rules provisions conflicted with section 110 and part D of the Clean Air Act. Those provisions included the following:

Rule 4:31 and 4:37 contained unapprovable Air Pollution Control Officer (APCO) discretion which allowed exemption of units from reasonably available control technology (RACT) due to lack of technical or economic feasibility.

Rule 4:31 contained unapprovable APCO discretion to demonstrate compliance with RACT.

The January 29, 2002 revision to rules 4:31 and 4:37 correct the above deficiencies. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating These Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*See* Sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (*See* Sections 110(l) and 193). The TCAPCD is an ozone attainment area, so RACT requirements do not apply to these rules.

Guidance and policy documents that we used to help evaluate the rules include the following:

1. *Issue Relating to VOC Regulation, Cut points, Deficiencies, and Deviations* (the ''Blue Book''), U.S. EPA, May 25, 1988.

2. *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendment of 1990* (the ''NO_X Supplement to the General Preamble''), U.S. EPA, 57 FR 55620, Nov. 25, 1992.

3. *State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards*, section 110 of the Clean Air Act (CAA), and Plan Requirements for Nonattainment Areas, Title I, Part D of the CAA.

4. *Requirement for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

5. *California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters, California Air Resources Board/CAPCOA, July 18, 1991.*

6. *Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT), U.S. EPA Office of Air Quality Planning and Standards, March 16, 1994.*

7. *Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT) for the Repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.*

8. *State Implementation Plan: Policy Regarding Excess Emission During Malfunctions, Startup, and Shutdown, U.S. EPA, Office of Air Quality Planning and Standards, September 20, 1999.*

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules.

None.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 13, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 15, 2002. This will incorporate these rules into the federally enforceable SIP.

On September 19, 2000, EPA also finalized a limited approval and limited disapproval of TCAPCD rule 4:34, Stationary piston Engines, for reasons similar to our action on rules 4:31 and 4:37. TCAPCD adopted revisions to rule 4:34 on January 29, 2002. Unfortunately, these revisions relaxed, rather than improved on the previous version of the rule. On March 27, 2002, the state withdrew revisions to TCAPCD rule 4:34. However, because Tehama is in attainment with the ozone NAAQS, sanctions under CAA section 179 and federal implementation plan (FIP) requirements do not apply. We are clarifying, therefore, that the version of rule 4:34 approved into the SIP on September 19, 2000 remains federally enforceable, and there are no sanction or FIP implications if this is not revised.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rules and if that provision may be severed from the remainder of the ruled, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because these rules approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, these rules do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

These rules also do not have tribal implications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. These rules also are not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because they are not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of these rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2002. Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 5, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(295) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(295) New and amended regulations for the following APCD were submitted on February 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Tehama County Air Pollution Control District.

(*1*) Rules 4:31 and 4:37 adopted on January 29, 2002.

* * * * *

[FR Doc. 02–11823 Filed 5–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000622191–2104–02; I.D. 041700D]

RIN 0648–AO35

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; seabird mitigation measures.

SUMMARY: NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that requires owners and operators of all vessels registered for use under a Hawaii longline limited access permit and operating with longline gear north of 23° N. lat. to employ a line-setting machine with weighted branch lines or use basket-style longline gear, and to use thawed blue-dyed bait and strategic offal discards during setting and hauling of longlines. This final rule also requires that the owners and operators of these vessels follow certain seabird handling techniques and annually complete a protected species educational workshop conducted by NMFS. This final rule follows an emergency interim rule published on June 12, 2001, and is being implemented to permanently codify the terms and conditions contained in a biological opinion (BiOp) issued on November 28, 2000, by the U.S. Fish and Wildlife Service (USFWS) and intended to afford protection to the endangered short-tailed albatross. This final rule also implements management measures that were recommended by the Western Pacific Fishery Management Council (Council) and published in a proposed rule on July 5, 2000. These measures were designed to minimize interactions between seabirds and the Hawaii-based longline fishery.

DATES: This final rule is effective June 13, 2002, except for amendments to §§ 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8), which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of a final environmental impact statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of an environmental assessment (EA), regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this rule to NMFS, PIAO and to OMB at the Office of Information and Regulatory Affairs, OMB, 725 17th St., NW, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: As discussed in the proposed rule, published at 65 FR 41424, July 5, 2000, Hawaii-based pelagic longline vessels are known to interact in a sometimes fatal manner with black-footed (*Phoebastria nigripes*) and Laysan (*P. immutabilis*) albatrosses. These seabirds follow the longline vessels, dive on the baited longline hooks, and may become hooked and subsequently drown. Although no fishery interactions with the endangered short-tailed albatrosses (*P. albatrus*) have been recorded to date, following the publication of the proposed rule, the USFWS prepared a BiOp for the fishery under section 7 of the Endangered Species Act (ESA) for this species. That BiOp concluded that the Hawaii-based longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross. However, it estimated that the fishery would take 15 short-tailed albatrosses during the 7–year period addressed in the consultation. (For the purposes of this BiOp, the USFWS considered a ''take'' to include not only injury or mortality to a short-tailed albatross caused by longline gear, but also any short-tailed albatross striking at baited hooks or mainline gear during longline setting or haulback.)

Based on this assessment, the USFWS BiOp requires NMFS to implement several measures applicable to the owners and operators of vessels registered for use under Hawaii limited access longline permits (Hawaii-based vessels). When making deep sets north of 23° N. lat., these vessels must employ a line-setting machine with at least 45 grams of weight attached within 1 meter of each hook. In addition, all Hawaii-based vessels operating north of 23° N. lat. must use thawed blue-dyed bait and strategic offal discards to distract birds during the setting and hauling of longline gear. Regardless of the area fished, all Hawaii-based vessel operators must follow certain handling techniques to ensure that any short-tailed albatross brought onboard alive is handled and released in a manner that maximizes the probability of its long-term survival (dead short-tailed albatrosses are to be frozen and their carcasses submitted to NMFS upon return to port). Finally, the USFWS BiOp requires that Hawaii-based vessel operators annually complete a protected species educational workshop conducted by NMFS. Although shallow ''swordfish-style'' setting is currently prohibited by an emergency rule implemented to protect sea turtles (see below), the USFWS BiOp requires that vessel operators making shallow sets north of 23° N. lat. begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. This requirement is not included in this final rule because the prohibition on ''swordfish style'' shallow set fishing is being undertaken under separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion issued by NMFS regarding sea turtles. On October 18, 2001, the USFWS amended the USFWS BiOp to allow basket-style longline gear to be set without a line-setting machine or weighted branch lines as data show that this gear has a rapid sink rate that results in few, if any, seabird interactions.

The USFWS BiOp's terms and conditions were implemented by NMFS on June 12, 2001, through an emergency interim rule, which also included sea turtle mitigation measures (FR 66 31561). Public comments were solicited at that time; however, none were received. On December 10, 2001, NMFS extended that emergency interim rule

for another 180 days, through June 8, 2002 (FR 66 63630).

Under the Council's recommended seabird mitigation measures (as described in the July 5, 2000, proposed rule), both vessel owners and vessel operators would have been required to attend annually a protected species workshop conducted by NMFS. In addition, the proposed rule would have required that all seabirds (not just short-tailed albatrosses) be handled and released in a manner that maximizes the probability of their long-term survival. As these two components of the Council's recommendation are more conservative than those in the USFWS BiOp, this final rule combines the terms and conditions of the USFWS BiOp (as previously implemented by the June 12, 2001, emergency interim rule), with the Council's recommendation on seabird handling and workshop attendance requirements. Additional background information on this fishery's interactions with seabirds may be found in the preamble to the proposed rule and is not presented here.

Comments and Responses

Comments on the Council's proposed rule were received from seven individuals.

Comment 1: The rule should not allow vessel operators to decide what mitigation techniques to use (pick list) but should mandate the use of specific techniques.

Response: This final rule does not allow vessel operators to choose mitigation techniques from a pick list. They are required to employ three non-discretionary techniques (blue dyed bait, strategic offal discards, and either basket-style longline gear or a line shooter with weighted branch lines) when fishing north of 23° N. lat. However, vessel operators may choose to use additional mitigation techniques.

Comment 2: NMFS should only require mitigation measures that are scientifically proven.

Response: The seabird mitigation methods in this final rule were studied for their effectiveness in reducing longline gear interactions with seabirds. Both NMFS and a private contractor tested the effectiveness of blue-dyed bait, strategic offal discards, and night setting. Data collected by NMFS observers between 1994–1998 were used to analyze the effectiveness of using a line-setting machine with weighted branch lines. These techniques were found to individually reduce seabird interactions from 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range.

Comment 3: NMFS should require fishermen to attach weights of at least 60 grams one meter from each hook on the branch line, because NMFS scientists used 60 grams of weight to achieve a 92–percent reduction in seabird catch.

Response: Although NMFS scientists tested 60 grams of weight, other scientists investigating seabird mitigation techniques have demonstrated that there are diminishing returns to the sink rates of baited hooks with the addition of weights greater than 40 grams. There are safety concerns associated with heavily weighted hooks because they increase the tension on the line. During longline haulback operations the heavily weighted hooks on the tense line can ricochet back onto vessel crew members and cause serious injury or death. Considering that many vessel operators are currently able to safely weight their gear with 45 grams, and that the sink rate would not significantly increase with the addition of more weight, NMFS believes it is unnecessary and potentially dangerous to require fishermen to use 60 grams of weight.

Comment 4: Strategic offal discharge should not be included as a seabird mitigation method because it attracts birds to the vessels and is unenforceable. The rule should also prohibit the discharge of spent bait with hooks, including fish heads with embedded hooks.

Response: NMFS recognizes that there is not universal agreement on the effectiveness of strategically discarding offal to deter seabirds from interacting with longline gear. However, studies of Hawaii-based vessels targeting swordfish have demonstrated that discharging offal strategically decreases the number of seabird interactions by an average of 53 percent and reduces seabird moralities by as much as 86 percent, when compared with holding all offal onboard during longline operations. NMFS agrees that offal containing hooks should not be discarded and this rule requires the removal of hooks from fish parts, offal, and spent bait prior to its discharge.

Comment 5: Until a study has been completed, NMFS should not advocate the use of blue-dyed bait in combination with strategic offal discharge.

Response: Although specific research on the interactive effects of blue-dyed bait used in combination with strategic offal discharge has not been conducted, there is no information to suggest that their combined use will be any less effective than the use of either method alone.

Comment 6: The rule should apply to Hawaii longline vessels fishing north of 23° N. lat., not only to those north of 25° N. lat.

Response: As required by the USFWS BiOp, as supported by the data on incidental catch of seabirds in the longline fishery, this final rule applies to all Hawaii-based longline vessels fishing north of 23° N. lat.

Comment 7: Longline fishing should be prohibited north of 23° N. lat. within 200 nautical miles (nm) off the NWHI during the first 3 months of the nesting season.

Response: Although not tested simultaneously, the mitigation techniques contained in this rule are each anticipated to reduce seabird interactions by a minimum of 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range. Closure of the area suggested would not be expected to further decrease interactions significantly.

Comment 8: Educating owners and operators through the protected species workshops should be mandatory and NMFS should not have the option of waiving this requirement. The workshop requirement should also be extended to crew members and fisheries observers.

Response: Both vessel owners and operators are required to complete annual protected species workshops. However, NMFS needs the flexibility to waive the requirement for protected species workshop attendance in certain circumstances if the waiver is needed for good and justifiable reasons. For example, if the permit holder (longline vessel owner) is a corporation, NMFS should be able to waive the workshop requirement with respect to each of its shareholders with the exception of a representative or designee of the corporation. Although crew members are not required to take the workshop due to the numbers involved and scheduling difficulties, NMFS encourages their attendance on a voluntary basis. The NMFS observer training program ensures that all fishery observers receive adequate training in protected species issues.

Comment 9: NMFS should prohibit the use of lightsticks in the Hawaii longline fishery to protect seabirds.

Response: The emergency interim rule (June 12, 2001) prohibits the possession and use of lightsticks north of the equator, but for the conservation of sea turtles. NMFS observer data do not show that lightsticks are a significant factor in the incidental catch of seabirds in the Hawaii-based longline fishery. However, this prohibition is part of a

separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion on sea turtles issued by NMFS.

Comment 10: The rule should differentiate between the swordfish and tuna longline sectors in adopting mandatory seabird mitigation methods.

Response: The USFWS BiOp contains different requirements for the two sectors (shallow, nighttime setting swordfish vessels vs. deep daytime setting tuna vessels); however, a June 12, 2001, emergency rule prohibited all shallow setting north of the equator in order to conserve sea turtles. That prohibition is expected to be made permanent because it is one of the mandatory terms and conditions of a March 29, 2001, biological opinion on sea turtles issued by NMFS. Since the shallow-set fishery for swordfish is no longer allowed to operate, there is no need to promulgate regulations to control that fishery.

Comment 11: Standards for maximum lighting brightness should be established for the night setting mitigation method, with all other types of lighting illegal while night setting.

Response: NMFS is not implementing a night setting requirement at this time because shallow, nightime setting is not expected to resume north of the equator (see response to comment 10).

Comment 12: If longline operators miscalculate sunrise and sunset times, the night setting method would be ineffective.

Response: NMFS is not implementing a night setting requirement at this time (see response to comment 10).

Comment 13: The rule should specifically delineate how enforcement shall occur and include provisions for monitoring the effectiveness of the mitigation methods.

Response: The U.S. Coast Guard (USCG) has indicated that it will enforce the use of seabird mitigation methods by conducting dockside inspections and aerial surveillance of fishing vessels at sea. At dockside and at sea, longline vessels will be checked for required equipment and vessel operators will be asked how and when they intend to employ seabird mitigation methods. Aerial surveillance will be used to observe the fishing process and determine whether line setting machines are being used when making deep sets north of 23° N. lat. To monitor and enforce attendance at the protected species workshops, each workshop participant will be given a completion certificate with their name and photograph, and each vessel's operator and owner must both maintain valid certificates in order to continue fishing.

Comment 14: The appropriate goal for seabird bycatch measures is the elimination of such bycatch entirely.

Response: At this time there is no single seabird interaction mitigation measure, or combination of measures, that would eliminate all seabird interactions with this fishery. However, NMFS intends to continue to research and develop seabird mitigation measures to reduce interactions with seabirds to the maximum extent practicable, as called for in the United Nations Food and Agricultural Organization's International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries.

Comment 15: The rule should include incentives for longline fishermen to participate in research and development programs to evaluate the effectiveness of seabird mitigation measures. There should be a requirement for monitoring mitigation measures on board Hawaii-based longline vessels and there should be research of more effective measures.

Response: Hawaii longline fishery participants have already voluntarily participated in seabird mitigation studies such as the testing of blue-dyed bait, strategic offal discards, and an underwater line-setting chute. In addition, nothing in this final rule prevents vessel operators from experimenting with new methods to reduce interactions with seabirds. The effectiveness of the mitigation measures required by this final rule will be evaluated primarily using data collected by NMFS observers, supplemented with data from the fishery logbooks.

Comment 16: NMFS should require automated, computer-monitored, NMFS-approved vessel monitoring systems (VMS) to be installed on all longline vessels.

Response: Existing NMFS regulations at 50 CFR 660.25 require all Hawaii-based longline fishing vessels to carry automated, computer-monitored VMS.

Comment 17: NMFS should expand the Hawaii longline fishery observer program to reduce the uncertainty regarding the rate of interactions with seabirds and the effectiveness of seabird mitigation methods. Observer coverage should be increased to at least 20 or 25 percent throughout the fishery. Observers should be trained in seabird identification and be required to record all seabird mortality data, mitigation measures employed, and the effectiveness of such measures.

Response: Over the past 15 months, NMFS has increased observer coverage in the Hawaii-based longline fishery to over 20 percent. Observers are currently trained in seabird identification, record seabird mitigation methods employed on each observed vessel, and note bird abundance while the vessel is setting or hauling its gear.

Comment 18: Operators of longline vessels not carrying observers should record accurate information on the number of birds caught on each set, along with information on the numbers of hooks set, locality of set, time, and date of set. Any dead seabird should be brought aboard the vessel, frozen, and brought to port for identification and study.

Response: As longline vessel operators are already required to record seabird interaction information on NMFS daily longline logbooks, no change is required to meet this request. The collection and further study of dead seabird specimens would contribute to the understanding of how longline fishing operations impact seabird populations. However, because the Migratory Bird Treaty Act limits the importation and transportation of live or dead birds or bird parts without a permit or an exemption from the Act, Hawaii-based fishermen will not be required to bring back to port all dead seabirds brought aboard their vessels. This final rule does require that fishermen retain and bring back any dead short-tailed albatross, an endangered species, brought aboard the vessel. This action is authorized under the Endangered Species Act.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the Hawaii-based pelagic longline fishery and was filed with the Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). In February 2002, the Council prepared an EA on the specific seabird mitigation measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is

estimated at 60 minutes for at-sea notification by a longline vessel operator of a take of a short-tailed albatross, 60 minutes to complete a short-tailed albatross recovery data form, and 30 minutes to complete a specimen tag for a short-tailed albatross. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule to NMFS and OMB (see **ADDRESSES**).

An FRFA that describes the impact this final rule is likely to have on small entities was prepared and is also available from the Council (see **ADDRESSES**). A summary of the FRFA follows.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. No comments on the initial regulatory flexibility analysis or the economic effects of this action were received. This final rule will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

All Hawaii-based longline vessels affected by this final rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of $3.5 million. Based on the information provided in the FRFA, this final rule will affect all 164 holders of Hawaii limited access longline permits. Most severely impacted will be the owners and operators of those vessels fishing north of 23° N. lat. During the time period which was the focus of the USFWS BiOp (1994–1998), an average of 96 vessels made at least one set north of 23° N. lat. each year. The distribution of these vessels by set type (deep versus shallow) is difficult to determine, as the majority made at least one set of each type. On average there were approximately 830 deep sets, and 4,100 shallow sets made annually north of 23° N. lat. between 1994 and 1998. The costs associated with this final rule can be categorized as direct (increased fixed or variable costs) or indirect (revenue changes). Because mitigation techniques vary by target, economic impacts follow this same pattern. Compared to the historic baseline (1994–1999, the period examined in the USFWS BiOp), the revenue impact to those vessels utilizing shallow sets north of 23° N. lat. (swordfish and mixed target vessels), is expected to be a gain of $335 per swordfish set (a 9 percent increase as compared to the 1998 fleet wide average of $3,724 per set) due to increased catch rates, but a loss of $598 per mixed target set (16 percent decrease) due to decreases in catch rates. The actual impact on these vessel owners and operators is uncertain, as the current emergency rule to protect sea turtles prohibits these vessels from utilizing shallow sets north of the equator. The anticipated revenue impact to vessels utilizing deep sets north of 23° N. lat. (vessels targeting tuna and the only fishery currently allowed in this area) is expected to be a gain of $432 per set (12 percent increase). Direct costs for these vessels include $2,700 annually for the amortized purchase price and maintenance of a line setting machine with weighted branch lines. In addition, this rule is anticipated to increase annual direct costs to operators of all vessels fishing north of 23° N. lat. by up to $500 for blue dye, and $400 for containers in which to store offal between sets. The actual net revenue increase/decrease in this fishery cannot be predicted, because of the added constraints to the fishery compared to the baseline period. The impacts of other aspects of this final rule (seabird handling procedures and annual attendance at a protected species workshop) have not been quantified but are expected to be minimal. Four alternatives to this final rule were considered and rejected. The first alternative would have required vessel operators to use at least two of six specified mitigation techniques (pick list) when fishing north of 25° N. lat. The second alternative would have also required the use of two techniques when fishing north of 25° N. lat., but would have left the decision of which two up to the Council. The third alternative would have prohibited longline fishing north of 23° N. lat. within the waters of the exclusive economic zone around Hawaii, while the fourth alternative was the no-action alternative. Based on the non-discretionary nature of the terms and conditions of the USFWS BiOp, these alternatives were all rejected on the basis that they do not meet the legal requirements of the Endangered Species Act. The amendment of the USFWS BiOp to allow the use of basket-style longline gear is intended to provide mitigation from the negative economic impacts of this final rule as one or more vessels that currently utilize this gear to make deep sets will not be required to refit their vessels to accommodate line shooters.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which the agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As a part of this rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of Hawaii limited access longline permits. The compliance guide will be available at the following web site: *http://swr.nmfs.noaa.gov/piao/index.htm*. Copies can also be obtained from the PIAO (see **ADDRESSES**).

As previously discussed, on November 28, 2000, the USFWS completed a formal Endangered Species Act section 7 consultation on this fishery. This consultation was amended on October 18, 2001, to allow the use of basket-style gear as an alternative to a line-setting machine with weighted branch lines. The formal consultation concluded that this fishery is not likely to jeopardize the continued existence of the short-tailed albatross. This final rule implements the mandatory terms and conditions of the USFWS BiOp that resulted from that consultation.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: May 8, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation of part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.12, the definition for ''Basket-style longline gear'' is added to read as follows:

§ 660.12 Definitions.

* * * * *≤

Basket-style longline gear means a type of longline gear that is divided into units called ''baskets'' each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

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3. In § 660.22, paragraphs (z) through (dd) are revised and new paragraphs (ee) and (ii) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *≤

(z) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35 (a)(1) and (a)(2).

(aa) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 660.35 (a)(3).

(bb) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(4), (a)(5), and (a)(6).

(cc) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(7) through (a)(9).

(dd) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ee) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (c).

(ff) Own a longline vessel registered for use under a Hawaii longline limited access permit that is engaged in longline fishing for Pacific pelagic management unit species, without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (a).

(gg) Fish for Pacific pelagic management unit species on a vessel registered for use under a Hawaii limited access longline permit without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (d).

(hh) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(ii) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

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Figure 3 to Part 660 [Removed]

4. Figure 3 to Part 660 is removed.

5. Section 660.35 is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* Owners and operators of vessels registered for use under a Hawaii longline limited access permit must ensure that the following actions are taken when fishing north of 23° N. lat.:

(1) Employ a line setting machine or line shooter to set the main longline when making deep sets using monofilament main longline;

(2) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(3) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(4) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(5) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(6) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(7) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(8) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(6) of this section; and

(9) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(b) *Short-tailed albatross handling techniques.* If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird;

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (b)(10) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and

Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird.

(8) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(10) If released under paragraph (a)(8) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(11) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) *Non-short-tailed albatross seabird handling techniques*. If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

5. Section 660.36 is added to read as follows:

§ 660.36 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

[FR Doc. 02–12030 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS Order No. 2180A–01]

RIN 1115–AG47

Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 3, 2002, at 67 FR 15753, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register** proposing to require certain commercial vessel operators and/or their ticketing agents to charge a $3 user fee from every commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a territory or possession of the United States, or an adjacent island except those exempted under section 286(e) of the Immigration and Nationality Act (Act) or 8 CFR part 286. The original comment period for the proposed rule closed on May 3, 2002. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, this document reopens the comment period to May 28, 2002.

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2180A–01 on your correspondence. You may also submit comments to the Service electronically at *insregs@usdoj.gov.* When submitting comments electronically please include INS No. 2180A–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization, 425 I Street, NW., Washington, DC 20536, 202–305–1200.

SUPPLEMENTARY INFORMATION:

Where can the public view the April 3, 2002, proposed rule?

The April 3, 2002, proposed rule can be viewed on the Government Printing Office Web site at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002—register&docid=02–8011-filed*

Dated: May 9, 2002.

James W. Ziglar,

Commissioner, Immigration, and Naturalization Service.

[FR Doc. 02–12045 Filed 5–9–02; 3:51 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM206; Special Conditions No. 25–02–06]

Special Conditions: Fairchild Dornier GmbH, Model 728–100; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Fairchild Dornier GmbH Model 728–100 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design will include an electronic flight control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions, in part, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions may also be defined.

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM206, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM206*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this action between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on

which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH applied for a type certificate for their new Model 728–100 airplane. The Model 728–100 is a 70–85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier GmbH must show that the Model 728–100 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25–97, 25–98, and 25–104.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 728–100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to Section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Fairchild Dornier GmbH Model 728–100 airplane will include an electronic flight control system. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of this equipment from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature. Since the loss of all electrical power may be catastrophic to the airplane, special conditions are proposed to retain the level of safety envisioned by § 25.1351(d).

Discussion

The Fairchild Dornier GmbH Model 728–100 airplane will require a continuous source of electrical power for the electronic flight control system. Section 25.1351(d), ''Operation without normal electrical power,'' requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical connections between the flight control surfaces and the pilot controls. The Fairchild Dornier GmbH Model 728 will utilize an electronic flight control system. With an electronic flight control system, there is no mechanical linkage between the pilot controls and the flight control surfaces. Pilot control inputs are converted to electrical signals which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators the electrical signals are converted to an actuator command, which moves the control surface. Uninterrupted electrical power is necessary to ensure the electronic flight control system function.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or auxiliary power unit (APU) is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing after total loss of the normal electrical power with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to supply:

1. Electrical power required for immediate safety, without the need for crew action, following the loss of the normal engine generator electrical power system (which includes APU power).

2. Electrical power required for continued safe flight and landing.

3. Electrical power required to restart the engines.

For compliance purposes, a test of the loss of normal engine generator power must be conducted to demonstrate that when the failure condition occurs during night instrument meteorological conditions (IMC), at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system, the following conditions are met:

1 Engine restart capability is provided.

2. Capability for continued operation in IMC is provided.

3. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

4. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728–100. Should Fairchild Dornier GmbH apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of section 21.101(a)(1). Fairchild Dornier has submitted applications for certification of both increased and reduced passenger capacity derivatives of the Model 728–100 airplane. These derivative models are designated the Model 928–100 airplane and the Model 528–100 airplane, respectively. As currently proposed, these derivative models share the same design feature of an electronic flight control system as the Model 728–100 airplane, and it is anticipated that they will be included in the applicability of these proposed special conditions.

Conclusion

This action affects only certain novel or unusual design features on Fairchild Dornier GmbH Model 728–100 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the

following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

Operation Without Normal Electrical Power. In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words, without electrical power from any source except for the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Issued in Renton, Washington, on April 23, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12023 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02N–0114]

Dental Devices; Reclassification of Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III to class II root-form endosseous dental implants intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. FDA is also proposing to reclassify endosseous dental implant abutments, which are separate components that are attached to the implant and intended to aid in prosthetic rehabilitation from class III to class II. This reclassification is being proposed on the Secretary of Health and Human Services (the Secretary's) own initiative based on new information. The agency is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document that would serve as the special control if this proposal becomes final.

DATES: Submit written or electronic comments by August 12, 2002. See section XIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–8879.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629) and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d at 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon , Inc.* v. *FDA*, 762 F. Supp. 382, 389-91 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the ''new information'' to support reclassification under section 513(e) of the act must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (*See, e.g., General Medical*

Co. v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, *e.g.*, nonpublic information in a pending PMA. (*See* section 520c of the act (21 U.S.C. 360j(c).)

II. Regulatory History of the Device

In the **Federal Register** of August 12, 1987 (52 FR30082), FDA issued a final rule classifying endosseous implants into class III (21 CFR 872.3640). The preamble to the proposal to classify the device (45 FR 85962, December 30, 1980) included the recommendation of the Dental Devices Panel (the Panel) regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the endosseous dental implant.

In the **Federal Register** of January 6, 1989 (54 FR 550 at 551), FDA issued a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for application of premarket approval requirements. Among other things, the notice described the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for issuing final rules requiring that preamendments class III devices have approved PMAs or declared completed product development protocols (PDP)s. Using those factors, FDA declared that the endosseous implant, identified in 21 CFR 872.3640, had a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA began a rulemaking proceeding to require that endosseous implants have an approved PMA or a PDP that has been declared completed.

In the **Federal Register** of December 7, 1989 (54 FR 50592), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the endosseous implant. In accordance with section 515(b)(2)(A) of the act, the agency summarized its proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet premarket approval requirements, and the benefits to the public from the use of the device. The proposal also provided an opportunity for interested persons to comment on the proposed rule and to request a change in the classification of the device based on new information relevant to its classification. The period for requesting a change in the classification of the device closed on December 22, 1989. The period for commenting on the proposed rule closed on February 5, 1990.

On December 12, 1989, FDA received a petition from the Dental Implant Manufacturers of America (DIMA) requesting a change in the classification of the root-form (*i.e.*, screw, basket, solid and hollow cylinder types) and blade-form endosseous dental implants from class III to class II. The petition was limited to one-stage endosseous implants and the first stage component of the two-stage implant system. The petition's request included implants composed of commercially pure titanium, titanium alloy (Ti–6Al–4V), ceramic single crystal aluminum oxide, and ceramic, polycrystalline alumina. After a number of exchanges between FDA and DIMA to resolve several deficiencies, FDA referred the petition to the Panel for its recommendation on the requested change in classification. The Panel met on October 24, 1991, and voted to deny DIMA's petition (Ref. 1).

Based on information provided by FDA for the October 24, 1991 meeting, the Panel did recommend that screw-type root-form endosseous dental implants be reclassified to class II. The Panel stated that special controls would not be adequate to control some of the risks for other types of endosseous dental implants and recommended that all nonscrew-types remain in class III. In the years following this recommendation, additional clinical data have been reviewed by FDA and the agency believes all root-form endosseous dental implants can be reclassified.

In accordance with section 513(e) of the act and 21 CFR 860.130(b)(2), based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the root-form endosseous dental implant from class III to class II when intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. FDA is further proposing to reclassify endosseous dental implant abutments from class III to class II. Endosseous dental implants, other than root-form, remain in class III and will require the filing of a PMA or PDP at a future date.

The Panel met again on November 4, 1997, with a continuation of the meeting on January 13, 1998. Based on new, publicly available information provided by FDA, the Panel recommended that all root-form endosseous dental implants and endosseous dental implant abutments be reclassified from class III to class II. The Panel believed that class II with special controls would provide reasonable assurance of safety and effectiveness.

III. Device Description

An endosseous dental implant is a device made of titanium or titanium alloy and is uncoated, or coated with titanium or hydroxyapatite, intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. Endosseous dental implants are used to attach either removable or fixed prostheses (crowns, bridges, partial removable dentures, or complete removable dentures) and are inserted into either the maxillary or mandibular alveolar ridge.

Endosseous dental implants can be defined as a one-stage or two-stage implant system. These may be loaded after a period of healing or, in some patients for some indications, they may be loaded immediately. Endosseous dental implants can be further generically grouped into four geometrically distinct types: Basket, screw, solid cylinder, and hollow cylinder. These four groups are known as ''root-form'' implants. Several other geometrical types of implants have been marketed that do not fall within the description of one of these four types and those types are not root-form implants. FDA is proposing to change the classification of only the root-form types.

Endosseous dental implant abutments are premanufactured prosthetic components directly connected to the endosseous implant and are used as an aid for prosthetic rehabilitation.

IV. Proposed Reclassification

Although the Secretary is proposing reclassification on his own initiative, the agency provided new information to the Panel and asked for its recommendation regarding the reclassification of the devices. In a public meeting on January 13, 1998, the Panel unanimously recommended that the root-form endosseous dental implant

be reclassified from class III to class II. The Panel believed that class II with a special control guidance document, which includes references to relevant voluntary consensus standards and gives guidance on labeling, would provide reasonable assurance of safety and effectiveness.

The Panel also recommended that endosseous implant abutments be reclassified from class III to class II. They recommended a separate classification from the root-form endosseous implants because the abutments are not considered implants. The Panel believed that class II with a special control guidance document that references relevant voluntary consensus standards would provide reasonable assurance of the safety and effectiveness of the device.

V. Risks to Health

When endosseous dental implants were classified into class III (52 FR 30082, August 12, 1987), the Panel and FDA identified several risks associated with endosseous dental implants for prosthetic attachment, including local soft tissue degeneration, hyperplasia, progressive bone resorption, exfoliation, local and systemic infection (including long term bacterial infection), damage to existing dentition, implant mobility, implant integrity, infectious endocarditis, paresthesia, perforation of the maxillary sinus, and perforation of the labial and lingual alveolar plates. Although the existence of the risks was well documented in numerous books and articles, the rate of occurrence was poorly documented.

Although abutment integrity was not discussed as a specific risk at the 1987 Panel meeting, FDA believes that this risk is a component of implant integrity and, therefore, we have included abutment integrity as a risk associated with endosseous dental implant abutments.

Since the classification of the device, additional data and information became available. Based on a review of the new data and information, the Panel, during an open public meeting on October 24, 1991, identified certain risks (parasthesia, perforation of the maxillary sinus, perforation of the labial and lingual alveolar plates, infectious endocarditis and implant integrity), which had only been addressed for screw type implants by clinical studies. Therefore, they believed that special controls would not adequately address these concerns for all implants. They recommended only the screw type be reclassified into class II (Ref. 1).

At the same meeting, the Panel concluded that the remaining risks of local soft tissue degeneration, hyperplasia, progressive bone resorption, exfoliation, local and systemic infection (including long-term bacterial infection), damage to existing dentition, and implant mobility had been addressed by clinical studies for all types of dental implants.

Although in 1991 the Panel stated that special controls could not adequately address the concern of implant integrity, they also stated that chemical and physical characterization and mechanical testing could partially control this risk with respect to fracture.

When the Panel considered new information, at the November 4, 1997, and January 13, 1998, meetings, they concluded that several published clinical and animal studies (Refs. 4, 5, 6, 7, 8, and 9) showed that the occurrence and incidence of the risks discussed at the 1991 Panel meeting are now well known and are found to be low for all root-form devices and dental implant abutment devices (Refs. 2 and 3).

On the basis of the new clinical studies and the Panel's two recommendations, FDA now believes that the root-form endosseous dental implants and endosseous dental implant abutments do not present a potential unreasonable risk to public health, and that special controls would provide reasonable assurance of the safety and effectiveness of the devices.

VI. Summary of Reasons for Reclassification

After considering the new information and the Panel's recommendations, FDA believes that general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that the endosseous dental implants and endosseous dental implant abutments should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is now sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Recommendation is Based

In addition to the potential risks to health of endosseous dental implants and endosseous dental implant abutments described in section V of this document, there is reasonable knowledge of the benefits of the device (Refs. 10 and 11). The devices provide increased chewing function and better appearance, resulting in an improved quality of patient life. Based on the available information, FDA believes the special control discussed in section VIII of this document is capable of providing reasonable assurance of the safety and effectiveness of the devices with regard to the identified risks to health of the device.

VIII. Special Controls

In addition to general controls, FDA believes that the guidance document entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA'' is an adequate special control to address the potential risks to health described for the root-form endosseous dental implants and endosseous dental implant abutments.

The guidance document would indicate when clinical data are appropriate and what engineering testing is needed. It will reference voluntary consensus standards that are relevant for these devices. It also will provide device specific labeling guidance. FDA believes that adherence to the guidance document would control implant and abutment fracture by providing guidance and reference to methodologies for chemical and physical characterization and mechanical testing.

To receive a copy of ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA'' via fax machine, call CDRH Facts-on-Demand system at 800–899–0381, or 301–827–0111 from a touch-tone telephone. Press 1 to access the system. At the second voice prompt, press 2, and then enter the document number (1389) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. The draft guidance is also available on the Internet and may be accessed at *http://www.fda.gov/cdrh* and at *http://www.fda.gov/ohrms/dockets/defaults.htm*.

IX. FDA's Tentative Findings

FDA believes the root-form endosseous dental implants and endosseous dental implant abutments should be classified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

X. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that

does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of these devices of the cost of complying with premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory cost with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, as issued, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information.

XIII. Submission of Comments and Proposed Dates

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal by August 12, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

XIV. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcript of the Dental Products Panel Meeting, October 24, 1991.

2. Transcript of the Dental Products Panel Meeting, November 4, 1997.

3. Transcript of the Dental Products Panel Meeting, January 13, 1998.

4. Buser, D., et al., ''Influence of Surface Characteristics on Bone Integration of Titanium Implants. A Histomorphometric Study in Miniature Pigs,'' *Journal of Biomedical Materials Research*, vol. 25, pp. 889–902, 1991.

5. Carr, A. B., et al., ''Reverse Torque Failure of Screw-shaped Implants in Baboons: Baseline Data for Abutment Torque Application,'' *International Journal of Oral and Maxillofacial Implants*, vol. 10, pp. 167–174, 1995.

6. Adell, R., *et al.*, ''A Long-term Follow-up Study of Osseointegrated Implants in the Treatment of Totally Edentulous Jaws,'' *International Journal of Oral and Maxillofacial Implants*, vol. 5, pp. 347–359, 1990.

7. O'Roark, W. L., ''Research Report: Improving Implant Survival Rates by Using a New Method of at Risk Analysis,'' *International Journal of Oral Implantology*, vol. 8, No. 1, pp. 31–57, 1991.

8. Buser, D., *et al.*, ''Long Term Evaluation of Nonsubmerged ITI Implants. Part 1: 8-year Life Table Analysis of a Prospective Multi-center Study With 2359 Implants,'' *Clinical Oral Implants Research*, vol. 8, pp. 161–172, 1997.

9. Block, M. S., J. N. Kent, ''Cylindrical HA-coated Implants—8-year Observations,'' *Compendium of Continuing Education Dentistry*, Supplement 15, pp. 526–532, 1993.

10. Proceedings of the 1996 World Workshop in Perisontics, *Annals of Periodontology*, vol. 1, No. 1, pp. 707–820, 1996.

11. Misch, C. E., *Contemporary Implant Dentistry*, St. Louis, MO: Mosby, pp. 89–118, 1999.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.3630 is added to subpart D to read as follows:

§ 872.3630 Endosseous dental implant abutment.

(a) *Identification.* An endosseous dental implant abutment is a premanufactured prosthetic component directly connected to the endosseous dental implant and is intended for use as an aid for prosthetic rehabilitation.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Final Guidance for Industry and FDA.''

3. Section 872.3640 is revised in subpart D to read as follows:

§ 872.3640 Endosseous dental implant.

(a) *Identification.* An endosseous dental implant is a device made of a material such as titanium or titanium alloy intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore a patient's chewing function.

(b) *Classification.* (1) Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Final Guidance for Industry and FDA.''

(2) Class III for endosseous dental implants other than the root-form.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established for the requirement for premarket approval for the devices described in paragraph (b)(2) of this section. See § 872.3 for the effective dates of requirement for premarket approval.

Dated: April 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–12041 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–010]

RIN 2115–AA97

Safety Zone; Racine Harbor Fest 2002, Racine, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone outside Racine Harbor south of Reef Point Marina Racine, Wisconsin for the Racine Harbor Fest 2002 fireworks celebration. This action is necessary to ensure the safety of life and property in the immediate vicinity of the fireworks launch platform during this event. This action is intended to restrict vessel traffic south of Racine Harbor.

DATES: Comments and related material must reach the Coast Guard on or before May 24, 2002. The proposed rule would be effective from 9:20 p.m. on June 15, 2002 through 9:55 p.m. on June 16, 2002.

ADDRESSES: You may mail comments and related material to the Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Chief of Port Operations, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–02–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed safety zone is necessary to safeguard the public from the hazards associated with storing, preparation and launching of the Harbor Fest fireworks display south of Racine Harbor, Racine, Wisconsin. Based on recent accidents that have occurred in other Captain of the Port Zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to safety and property.

The combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling in to the water could easily result in serious injuries or fatalities.

Establishing safety zones by notice and comment rulemaking gives the public an opportunity to comment on the proposed zones and provides better notice than promulgating temporary final rules.

Discussion of Proposed Rule

The Coast Guard is proposing a safety zone south of Racine Harbor, Racine, Wisconsin. The Coast Guard would notify the public of the safety zone, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels would be restricted from the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule would be in effect for only fifty minutes on the day of the event. Vessel traffic could safely pass outside of the proposed safety zone during the event. Although the safety zone for the event would encompass the entire navigation channel, traffic would be allowed to pass through the safety zone with permission of the Captain of the Port Milwaukee, or his designated on scene Patrol Commander.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*see* **ADDRESSES**).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9:20 p.m. on June 15, 2002 through 9:55 p.m. on June 16, 2002 a new temporary § 165.T09–003 is added to read as follows:

§ 165.T09–003 Safety Zone; Waters south of Racine Harbor, Racine, Wisconsin.

(a) *Location.* The following area is a safety zone: all waters and adjacent shoreline bounded by the arc of a circle with a 140-foot radius with its center in approximate position 42°43.44′ N, 087°46.41′ W, located south of Racine Harbor.

(b) *Enforcement period.* This safety zone will be enforced on June 15 and 16, 2002 from 9:20 p.m. to 9:55 p.m. (local time). The Coast Guard Captain of the Port Milwaukee or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The ''duly appointed representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone shall comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF–FM channels 16 or 21A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the Safety Zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the Safety Zone and restriction imposed.

Dated: May 6, 2002.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–12027 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 260–0339b; FRL–7174–6]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Tehama County Air Pollution Control District (TCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from industrial, institutional, and commercial boilers, steam generators, process heaters, and stationary gas turbines. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 13, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95812

Tehama County Air pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96008–0038.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses local rules, TCAPCD 4:31 and 4:37. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments on the direct final rule, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Anyone interested in commenting should do so at this time, we do not plan to open a second comment period. If we do not receive adverse comments on the direct final rule, no further activity is planned. For further information, please see the direct final action.

Dated: April 5, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–11824 Filed 5–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on a Petition To Delist the Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*), throughout their ranges, from the Federal list of threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition and additional information available in our files did not present substantial scientific or commercial information indicating that delisting of the Lost River and shortnose suckers may be warranted. We will not be initiating a further status review in response to the petition to delist.

DATES: The finding announced in this document was made on May 10, 2002.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition and finding should be submitted to the Project Leader, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6610 Washburn Way, Klamath Falls, Oregon 97603. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve A. Lewis, at the above address, or telephone 541/885–8481.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species, if one has not already been initiated (50 CFR 424.14).

The petition to delist the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*), dated September 12, 2001, was submitted by Richard A. Gierak, representing Interactive Citizens United. This petition also requested the removal of the southern Oregon/Northern California coast coho salmon (*Oncorhynchus kisutch*) from the Federal list of threatened and endangered species. This species is under the jurisdiction of the National Marine Fisheries Service and will be addressed by them in a separate finding. The petition was received by the Department of the Interior, Office of the Executive Secretariat on September 26, 2001. This petition finding also responds to three other petitions to delist the Lost River and shortnose suckers, which were received from Leo Bergeron, James L. Buchal, and Naomi Fletcher after Mr. Gierak's petition was submitted. As explained in our 1996 Petition Management Guidance, subsequent petitions are treated separately only when they are greater in scope or broaden the area of review of the first petition. The three subsequent petitions to delist the Lost River and shortnose suckers were considered equivalent to Mr Gierak's petition. Therefore, we treated these three petitions as comments on the first petition received.

The petition requests the delisting of the Lost River sucker and shortnose sucker. The petition's supporting documentation consists of four pages and ''Figures 2 & 3'' from testimony by David A. Vogel before the U.S. House Committee on Resources (Vogel 2001), five bibliographic references, and eight footnotes. Three of the five bibliographic references are cited in the excerpted section of the testimony

(Buettner 1999, Markle *et al.* 1999, 53 FR 27130). The footnotes support the information in Figure 2 of the petition. All of the references have been reviewed in this decision. Two of the petitioner's bibliographic references (Buettner 1999 and Markle *et al.* 1999) are abstracts from a 1999 conference and are superseded by more recent reports by the principal authors (United States Bureau of Reclamation (USBR) 2001, Desjardins and Markle 2000). Four of the eight footnotes provide quotations from Professor Carl Bond of Oregon State University confirming the low population numbers of suckers in the 1950s through the 1970s, while the remainder either replicate previous citations (53 FR 27130, USBR 2001), qualify a methodology (Fortune 1986, citation unspecified in the petition), or reference a sucker working group meeting in 1987. The information in the testimony was previously available to the Service and was considered in a 2001 status review of the Lost River and shortnose suckers.

Discussion

The Lost River sucker and shortnose sucker are two fishes that naturally occur only in the Klamath Basin of southern Oregon and northern California. They are long-lived species, reaching ages of over 30 years. Both species reside primarily in lake habitats and spawn in tributary streams, or at springs within Upper Klamath Lake itself. Historically, the two species made large spawning migrations up the rivers of the Upper Klamath Basin. The two species were federally listed as endangered in 1988 (53 FR 27130). At the time of listing, recognized threats to the species included: (1) Drastically reduced adult populations and lack of significant recruitment; (2) over-harvesting by sport and commercial fishing; (3) potential competition with introduced exotic fishes; (4) lack of regulatory protection from Federal actions that might adversely affect or jeopardize the species; (5) hybridization with the other two sucker species native to the Klamath Basin; and (6) large summer die-offs caused by declines in water quality.

The petitioners assert, through reference to statements made in the testimony of David A. Vogel, that delisting of the Lost River and shortnose suckers should occur because: (1) The estimates of the sucker populations in the 1980s were in error and did not, in fact, demonstrate a precipitous decline (i.e., the populations were much larger than assumed), or (2) the estimates of the sucker populations in the 1980s were reasonably accurate, and the suckers have demonstrated an enormous boom in the period since listing and no longer exhibit ''endangered'' status.

In 2001, the Service conducted a status review of the Lost River and shortnose suckers. This 2001 status review drew from all information provided in published and unpublished reports on the biology, distribution, and status of the listed sucker species in the Klamath region and the ecosystem on which they depend. The 2001 status review included additional information and we also considered this information as we reviewed the petition.

With regard to Mr. Vogel's first and second statements, concerning sucker population estimates, the early population estimates were based on the available, though limited, sampling data and from creel surveys for the sport and subsistence fishery for suckers, which declined precipitously in the 1980s and caused the Oregon Department of Fish and Wildlife to terminate the fishery in 1987, just prior to the federal listing.

Comparisons between current estimates and those made during the fishery, prior to its termination in 1987, are not informative due to extreme differences in methodology. Population estimates made since listing, while numerically higher than earlier estimates, show no overall trend for increasing populations within the last decade.

The endangered status of the suckers is based on continuing threats to the populations. The 2001 status review identifies continuing threats to the two species which warrant maintaining their listing as endangered under the Endangered Species Act, including but not limited to habitat loss, degradation of water quality, periodic fish die-offs, and entrainment into water diversions.

Finding

We have reviewed the petition and its supporting documentation, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find that no substantial information has been presented or found that would indicate that delisting of the Lost River sucker or shortnose sucker may be warranted.

Information Solicited

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the Act. However, we continually assess the status of species listed as threatened or endangered. To ensure that our information is complete, and based on the best available scientific and commercial data, we are soliciting information for both sucker species.

References Cited

Buettner, M. 1999. Status of Lost River and shortnose suckers. U.S. Bureau of Reclamation. Abstract of presentation at the 1999 Klamath Basin Watershed Restoration and Research Conference. 1 p.

Desjardins, M. and D. Markle. 2000. Distribution and biology of suckers in Lower Klamath reservoirs. 1999 final report submitted to PacifiCorps, Portland, Oregon. 75 pp.

Markle, D., L. Grober-Dunsmoor, B. Hayes, and J. Kelly. 1999. Comparisons of habitats and fish communities between Upper Klamath Lake and Lower Klamath Reservoirs. Abstract of presentation at the 1999 Klamath Basin Watershed Restoration and Research Conference. 1 p.

U.S. Bureau of Reclamation. 2001. Biological assessment of Klamath Project's continuing operations on the endangered Lost River sucker and shortnose sucker. Klamath Falls, Oregon. 112 pp.

U.S. Fish and Wildlife Service (''Service'') 2001. Biological/conference opinion regarding the effects of operation of the Bureau of Reclamation's Klamath Project on the endangered Lost River sucker (*Deltistes luxatus*), endangered shortnose sucker (*Chasmistes brevirostris*), threatened bald eagle (*Haliaeetus leucocephalus*) and proposed critical habitat for the Lost River and shortnose suckers. Klamath Falls, Oregon. 188 pp.

Vogel, D. 2001. Testimony of David A. Vogel before the House Committee on Resources oversight field hearing on water management and endangered species issues in the Klamath Basin; June 16, 2001. 7 pp.

Author

The primary author of this document is Stewart Reid, fishery biologist, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 10, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–12123 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 050602B]

RIN 0648–AP79

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability (NOA); request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP). This amendment would prohibit the use of non-pelagic trawl gear in Cook Inlet.

DATES: Comments on Amendment 60 must be received by July 15, 2002.

ADDRESSES: Comments on the FMP amendment may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Copies of Amendment 60 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action by the Council and NMFS are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228, *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 60 was adopted by the Council in September 2000. If approved by NMFS, this amendment would prohibit the use of non-pelagic trawl gear in Cook Inlet north of a line from Cape Douglas (58°51.10′ N. lat.) to Point Adam (59°15.27′ N. lat.). Amendment 60 is necessary to comply with the Magnuson-Stevens Act mandate that regional councils must take measures to reduce bycatch in the nation's fisheries.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the amendment.

Dated: May 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12033 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the ranger district.

The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an environmental impact statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be available for review in September 1999. A Revised Notice of Intent was published in the **Federal Register** on March 8, 2000 (Volume 65, Number 46, page 12202). The revised notice announced that a draft environmental impact statement was now expected to be available for public review in July 2000 and a final environmental impact statement should be available for review by October 2000. This notice revises the expected date of availability for public review of a draft environmental impact statement to June 2002, a final environmental impact statement should be available for review in October 2002.

FOR FURTHER INFORMATION CONTACT: Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317, (505) 682–2551.

Authority: 16 U.S.C. 472, 551.

Dated: May 7, 2002.

Gerald M. Hawkes,

Acting Forest Supervisor, Lincoln National Forest.

[FR Doc. 02–11966 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Arizona, New Mexico, West Texas, and West Oklahoma New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico, June 24–28, 2002. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393). The 12 to 15 member panel shall be composed of a Natural Resources Official from the State of New Mexico, two representatives from federal land management agencies, at least one tribal or pueblo representative, at least two independent scientists with experience in forest ecosystem restoration, and equal representation from: conservation interests; local communities; and commodity interests.

DATES: The meeting will be held June 24–28, 2002, beginning at 10 am on Monday, June 24 and ending at approximately 4 pm on Friday, June 28.

ADDRESSES: The meeting will be held at the Wyndham Garden Hotel, 6000 Pan American Freeway NE, Albuquerque, NM 87109.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, at (505) 842–3425, or Angela Sandoval, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Items to be covered on the agenda include: (1) Review of the requirements of the Federal Advisory Committee Act; (2) review of the bylaws for the panel and the consensus process; (3) project proposal evaluations; and (4) public comment. Council discussion is limited to Panel members and Forest Service staff. Project proponents may provide calcification in response to questions from Panel members during Panel discussions. Issues may be brought to the attention of the panel by submitting written statements to Walter Dunn at the address stated above. Written statements may also be submitted to the panel staff before or after the meeting. Public input sessions will be provided during the meeting. Individuals who submit written statements to Walter Dunn or the panel staff may address the panel during those sessions.

Dated: May 8, 2002.

Lucia M. Turner,

Deputy Regional Forester.

[FR Doc. 02–11965 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 6, 2002. The

Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Discussions on Changes to Include Ethics and Governance, Overseers and Judges Proposed Marketing Plan and Baldrige National Quality Program Hoshins for 2002 and 2003; a Program Update; and Issues from June 5 Judges' Meeting. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Monday, June 3, 2002, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene June 6, 2002 at 8:30 a.m. and adjourn at 3 p.m. on June 6, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12038 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Wednesday, June 5, 2002. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2002 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 5, 2002 at 11 a.m. and adjourn at 4:30 p.m. on June 5, 2002. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12040 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 4, 2002, from 8:25 a.m. to 5:15 p.m. and Wednesday, June 5, 2002, from 8:15 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of twelve members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update, an Update on Safety, NIST 2010 Developments, Report from a Strategic Focus Group, Selection Process for Strategic Focus Areas and Presentation on Proposed NIST Budget Metrics. Discussions scheduled to begin at 4:15 p.m. and to end at 5:15 p.m. on June 4, 2002, and to begin at 8:15 a.m. and to end at Noon on June 5, 2002, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program, and feedback sessions will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Stull no later than Thursday, May 30, 2002, and she will provide you with instructions for admittance. Ms. Stull's e-mail address is *carolyn.stull@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene June 4, 2002 at 8:25 a.m. and will adjourn at Noon on June 5, 2002.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration

Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Stull, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 16, 2002, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12039 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 960223046–2083–07; I.D. 032002A]

RIN 0648–ZA09

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS (hereinafter ''we'' or ''us'') issues this document to describe how to apply for funding under the Saltonstall-Kennedy (S-K) Grant Program and how we will determine whether to fund a proposal.

Under the S-K Program, we provide financial assistance for research and development projects that address various aspects of U.S. fisheries (commercial or recreational), including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

DATES: We must receive your application by the close of business July 15, 2002 in one of the offices listed in section *I.H. Application Addresses* of this document. You must submit one signed original and nine signed copies of the completed application (including supporting information). We will not accept facsimile applications.

ADDRESSES: You can get an application package from, and send your completed application(s) to, the NMFS Regional Administrator located at any of the offices listed in section I.H. of this document. You may also get the application package from the S-K Home Page (*see* section I.I.). However, we cannot accept completed applications electronically.

FOR FURTHER INFORMATION CONTACT: Alicia L. Jarboe, S-K Program Manager, (301) 713–2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

We are soliciting applications for Federal assistance under the Saltonstall-Kennedy Act (S-K Act), as amended (15 U.S.C. 713c–3). This document describes how you can apply for funding under the S-K Grant Program, and how we will determine which applications we will fund. We will set aside $5 million of the expected $10.3 million available to fund projects under a new priority under section II.A., Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon. We will use the remaining estimated $5.3 million to fund the other priorities under sections II.B.-F.

A. Background

The S-K Act established a fund (known as the S-K fund) that the Secretary of Commerce uses to provide grants or cooperative agreements for fisheries research and development projects addressed to any aspect of U.S. fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures. U.S. fisheries include any fishery, commercial or recreational, that is, or may be, engaged in by citizens or nationals of the United States, or citizens of the Northern Mariana Islands (NMI), the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

The objectives of the S-K Grant Program, and, therefore, the funding priorities, have changed since the program began in 1980. The program has evolved as fishery management laws and policies, and research needs, have evolved in response to changing circumstances.

The original focus of the program was to develop underutilized fisheries within the U.S. Exclusive Economic Zone (EEZ, i.e., 3–200 miles (5.6–370.4 kilometers) off the coast). This focus was driven in part by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act, originally passed in 1976, directed us to give the domestic fishing industry priority access to the fishery resources in the EEZ. In 1980, the American Fisheries Promotion Act (AFPA) amended the S-K Act to stimulate commercial and recreational fishing efforts in underutilized fisheries. The competitive S-K Program initiated as a result of the AFPA included fisheries development and marketing as funding priorities.

In the following years, the efforts to Americanize the fisheries were successful to the point that most nontraditional species were fully developed and some traditional fisheries became overfished. Therefore, we changed the emphasis of the S-K Program to address conservation and management issues and aquaculture.

In 1996, the Sustainable Fisheries Act (SFA) (Pub. L. 104–297), was enacted. The SFA amended the Magnuson-Stevens Act and supported further adjustment to the S-K Program to address the current condition of fisheries.

The Magnuson-Stevens Act, as amended by the SFA, requires us to undertake efforts to prevent overfishing, rebuild overfished fisheries, insure conservation, protect essential fish habitat (EFH), and realize the full potential of U.S. fishery resources. It further requires that we take into account the importance of fishery resources to fishing communities; provide for the sustained participation of such communities; and, to the extent possible, minimize the adverse economic impacts of conservation and management measures on such communities. The Magnuson-Stevens Act defines a ''fishing community'' as ''a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel

owners, operators, and crew and United States fish processors that are based in such community.'' (16 U.S.C. 1802 (16)). We have refocused the S-K Program to address the needs of fishing communities as defined by the Magnuson-Stevens Act.

The NOAA Strategic Plan, updated in 1998, has also shaped the S-K Program. The Strategic Plan has three goals under its Environmental Stewardship Mission: Build Sustainable Fisheries (BSF), Recover Protected Species, and Sustain Healthy Coasts. The fisheries research and development mission of the S-K Program directly relates to the BSF goal. There are three BSF objectives in the Strategic Plan:

1. Eliminate and prevent overfishing and excess harvesting capacity.

2. Attain economic sustainability in fishing communities.

3. Develop environmentally and economically sound marine aquaculture.

For the FY 2002 S-K Grant Program announced in this document, we have attempted to address the most important needs of fishing communities in terms of the preceding BSF objectives. This goal is reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping fishing communities to resolve issues that affect their ability to fish; make full use of currently managed species or explore the potential for development of new sustainable managed fisheries; develop environmentally sound aquaculture; and address the socioeconomic impacts of overfishing and excess harvesting capacity.

The S-K Program is open to applicants from a variety of sectors, including industry, academia, and state and local governments. We encourage applications that involve collaboration between industry and the other sectors listed.

B. Changes from the Last Solicitation Notice

We have made several changes in this document from the last S-K Grant Program solicitation notice published on March 7, 2001 (66 FR 13701). Therefore, we encourage you to read the entire document before preparing your application.

The scope of the program for FY 2002 is not limited to species under Federal jurisdiction (whether under Fishery Management Plans (FMPs) or not), but includes state managed fisheries as well.

We have added a new priority under section II.A., Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon. Maine's Atlantic salmon aquaculture industry is the top producer of cultured salmon in the United States and provides 2,500 jobs, generates $140 million in personal income, and serves as an increasingly important source of food protein to U.S. consumers.

Atlantic salmon in the eight Maine rivers were listed as endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531–1544) in November 2000. Interbreeding with and competition from escaped farm-raised salmon from Maine's aquaculture industry may threaten the wild salmon population in the Gulf of Maine. The continuation of the Atlantic salmon aquaculture industry depends on eliminating the threats the industry poses to the endangered wild Atlantic salmon.

We will use $5 million of the expected $10.3 million available to fund only projects under this priority. The remaining $5.3 million will be allocated, in no predetermined amounts, among the other priority areas, including the additional priorities mentioned below.

Another new priority is Fishing Capacity Reduction under the Magnuson Stevens Act Sections 312(b)-(e). This replaces the priority Planning for Fishing Community Transition in our FY 2001 program.

We have also added a priority entitled, Fisheries Socioeconomics.

The Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements published in the **Federal Register** October 1, 2001 (66 FR 49917), are applicable to this solicitation. Therefore, this solicitation does not include a discussion of the individual requirements.

C. Funding

We expect to have approximately $10.3 million available for grant awards for Fiscal Year (FY) 2002, which began on October 1, 2001. However, we cannot guarantee that sufficient funds will be available to make awards for all proposals deserving of funding.In order to be funded under the S-K Grant Program, applications must propose activities that: address one of the funding priorities listed in section II of this document; are expected to produce a direct benefit (e.g., tool, information, service, or technology) to the fishing community (as defined in section I.A. of this document); and can be accomplished within 18 months. Acceptable research and development activities include applied research, demonstration projects, pilot or field testing, or business plan development. However, we will not fund projects that primarily involve infrastructure construction, port and harbor development, or start-up or operational costs for private business ventures. Furthermore, if your proposed project primarily involves data collection, we will only consider it if it is directed to a specific problem or need and has a fixed duration. We will not consider data collection programs of a continuing nature.

D. Eligibility

You are eligible to apply for a grant or a cooperative agreement under the S-K Grant Program if:

1. You are a citizen or national of the United States;

2. You are a citizen of the NMI, being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;

3. You are a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia; or

4. You represent an entity that is a corporation, partnership, association, or other non-Federal entity, non-profit or otherwise (including Indian tribes), if such entity is a citizen of the United States or NMI, within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. app. 802).

We support cultural and gender diversity in our programs and encourage women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate fisheries policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from individuals, government entities, and businesses in U.S. insular areas.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in all of our programs, including S-K. Therefore, we encourage all applicants to include meaningful participation of MSIs.

We encourage applications from members of the fishing community, and applications that involve fishing community cooperation and participation. We will consider the extent of fishing community involvement when evaluating the potential benefit of funding a proposal.

You are not eligible to submit an application under this program if you are an employee of any Federal agency, a Fishery Management Council (Council), or an employee of a Council.

However, Council members who are not Federal employees can submit an application to the S-K Program.

Our employees (whether full-time, part-time, or intermittent) are not allowed to help you prepare your application, except that S-K Program staff may provide you with information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not help with conceptualizing, developing, or structuring proposals, or write letters of support for a proposal.

E. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum period of 18 months. We award cooperative agreements in those situations where we anticipate having substantial involvement in the project. ''Substantial involvement'' means we will share responsibility for management, control, direction, or performance of the project with you, the recipient of the award.

We do not fund multi-year projects under the S-K Program. If we select your application for funding and you wish to continue work on the project beyond the funding period, you must submit another proposal to the competitive process for consideration, and you will not receive preferential treatment.

Even though we are publishing this announcement, we are not required to award any specific grant or cooperative agreement, nor are we required to obligate any part or the entire amount of funds available.

F. Cost Sharing

We are requiring cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. You must provide a minimum cost share of 10 percent of total (Federal and non-Federal combined) project costs, but your cost share must not exceed 50 percent of total costs.

You may find this formula useful:

1. Total Project Cost (Federal and non-Federal cost share combined) x .9 = Maximum Federal Share.

2. Total Cost - Federal share = Applicant Share.

For example, if the proposed total budget for your project is $100,000, the maximum Federal funding you can apply for is $90,000 ($100,000 x .9). Your cost share in this case would be $10,000 ($100,000 - $90,000).

For a total project cost of $100,000, you must contribute at least $10,000, but no more than $50,000 (10–50 percent of total project cost). Accordingly, the Federal share you apply for would range from $50,000 to $90,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding.

The funds you provide as cost sharing may include funds from private sources or from state or local governments, or the value of in-kind contributions. You may not use Federal funds to meet the cost sharing requirement except as provided by Federal statute. In-kind contributions are non-cash contributions provided to you by non-Federal third parties. In-kind contributions may include, but are not limited to, personal services volunteered to perform tasks in the project, and permission to use, at no cost, real or personal property owned by others.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in 15 CFR parts 14 and 24. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated. You must document the in-kind services or property you will use to fulfill your cost share.

If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document. (See 66 FR 49918, October 1, 2001, for additional information on cost sharing).

G. Catalog of Federal Domestic Assistance (CFDA)

The S-K Grant Program is listed in the CFDA under 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

H. Application Addresses

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930; (978) 281–9267.

Southeast Region, NMFS, 9721 Executive Center Drive, North,

St. Petersburg, FL 33702–2432, (727) 570–5324.

Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, (562) 980–4033.

Pacific Islands Area Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700, (808) 973–2937.

Northwest Region, NMFS, 7600 Sand Point Way, N.E., BIN C15700, Building 1, Seattle, WA 98115, (206) 526–6115.

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or

Federal Building, 709 West 9th Street, 4th Floor, Juneau, AK 99801–1668, (907) 586–7224.

I. Electronic Access Addresses

This solicitation and the application package are available on the NMFS S-K Home Page at: www.nmfs.noaa.gov/sfweb/skhome.html.

A copy of the Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements (66 FR 49917) is also available on the S-K Home Page.

The CFDA is available at: www:cfda.gov/.

The 1998 updated Executive Summary of the NOAA Strategic Plan is available at: www.strategic.noaa.gov/ and the Magnuson-Stevens Act is available at: www.nmfs.noaa.gov/sfa/magact/.

A list of institutions considered to be MSIs is available at: www.ed.gov/offices/OCR/minorityinst.html.

The Buyback Framework regulations pertaining to Priority B (50 CFR 600.1000 *et seq.*) are available at: www.access.gpo.gov/nara/cfr/waisidx—01/50cfr600—01.html.

Federal Business Opportunities (replacement for the Commerce Business Daily) is available at: *www.fedbizopps.gov*.

II. Funding Priorities

Your proposal must address one of the six priorities listed here.

If we do not receive proposals that adequately respond to the priorities listed, we may use S-K funds to carry out a national program of research and development addressed to aspects of U.S. fisheries pursuant to section 713c–3(d) of the S-K Act, as amended.

The priorities are not listed in any particular order and each is of equal importance, although the funds are partitioned between priority A and the remaining priorities. We will set aside $5 million to fund projects under Priority A. The remaining estimated $5.3 million may be used to fund projects under Priorities B through F. There is no similar predetermined allocation for portions of the $5.3 million among Priorities B through F.

If we do not receive sufficient fundable applications to use the entire $5 million reserved for Priority A, we will carry the remainder over to address the Atlantic salmon aquaculture priority in our FY 2003 competition.

A. Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon

Promote the continued development of the Atlantic salmon aquaculture industry, by minimizing the potential for negative impacts on wild Atlantic salmon, which is listed as endangered under the ESA. Acceptable activities include the development and testing of:

More secure cages to reduce farmed fish escapement;

Brood stock strains that grow more quickly, better resist disease, or pose less genetic threat to North Atlantic wild salmon stocks;

Improved marks or tags to trace potential escapes of farmed fish;

Vaccines or other methods to prevent the spread of disease between farmed fish and wild fish; and

Improved methods to monitor sea cage integrity and farmed fish disease.

Note, if your application addresses Priority A you should submit it to the NMFS Northeast Region, regardless of your location (see I.H., Application Addresses).

B. Fishing Capacity Reduction under the Magnuson-Stevens Act Sections 312(b)-(e)

Promote the reduction of excess harvesting capacity in appropriate fisheries by analyses and evaluations that prepare the proponents of buybacks financed by NMFS loans under Title XI of the Merchant Marine Act to consider, plan for, organize, justify, support, and effect financed buybacks. (See 50 CFR part 600.1000, *et seq.* for framework rules governing buybacks; see section I.I. for electronic address of rules.) Acceptable activities include, but are not limited to:

1. Analyzing cost/benefit to determine a fishery's potential for financed buyback, including:

a. Establishing the type of financed buyback (i.e., permit only or permit and vessel buyback) that reduces the maximum capacity at the least cost in the least amount of time;

b. Knowledgeably estimating various capacity ranges in a fishery that could be bought back at various cost ranges;

c. Evaluating harvesters' pre-buyback cost-income, how various buyback capacity/cost ranges could change post-buyback cost-income, the prospective ability of post-buyback harvesters to pay the estimated fees to service the buyback loan, and the benefits to them of doing so; and

d. Assuming the fishery's FMP already prohibits new entrants to the fishery, establishing the scope and possible content of appropriate FMP amendments that might first be required to effectively and permanently resolve latent capacity in that fishery prior to buyback, and to prevent post-buyback vessel upgrading or other circumstances from replacing the capacity that a buyback removes.

2. Evaluating detailed means and methods for industry buyback proponents in the fishery to efficiently and effectively:

a. Survey potential referendum voters (each permit holder in the buyback fishery) to establish the prospective degree of interest in, and support for, a financed buyback in that fishery, and

b. Prepare a successful financed buyback application and

business plan (see 50 CFR 600.1003).

In addition to the above, responsible proponents of financed buybacks in individual fisheries may also submit proposals to prepare actual financed buyback applications and business plans for that fishery.

Note, depending on the type of activity you propose, you may be required to obtain approval under the Paperwork Reduction Act (PRA) for surveys, etc., related to this priority. You should consider this when preparing your application and estimated time lines.

C. Conservation Engineering

Reduce or eliminate adverse interactions between fishing operations and nontargeted, protected, or prohibited species, including the inadvertent take, capture, or destruction of such species. These include juvenile or sublegal-sized fish and shellfish, females of certain crabs, fish listed under the ESA, marine turtles, seabirds, or marine mammals.

Improve the survivability of fish discarded or intentionally released and of protected species released in fishing operations.

Reduce or eliminate impacts of fishing activity on EFH that adversely affect the sustainability of the fishery.

D. Optimum Utilization of Harvested Resources under Federal or State Management

Reduce or eliminate factors such as diseases, human health hazards, and quality problems that limit the utilization of fish and their products in the United States and abroad.

Increase public knowledge of the safe handling and use of fish and their products.

Develop usable products from economic discards (defined in the Magnuson-Stevens Act as ''fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons''), underutilized species, and byproducts of processing.

Facilitate industry cooperation and outreach to promote and enhance marketability of regional U.S. fishery products.

Collect data on population dynamics, life histories, etc., of fish not currently under Federal FMPs, for the Councils to determine the feasibility of a new federally managed fishery that could provide additional fishing opportunity.

E. Marine Aquaculture

Advance the implementation of marine aquaculture by addressing technical aspects such as systems engineering, environmental compatibility, and culture technology.

Reduce or eliminate legal and social barriers to aquaculture development, e.g., legal constraints, use conflicts, exclusionary mapping, and appropriate institutional roles.

Address environmental issues for marine aquaculture, e.g., measure and reduce water quality and benthic community impacts; evaluate and reduce negative interactions between aquaculture and wild stocks, protected resources, and EFH; develop best management practices with scientific analysis and assessment of risk. Note, proposals pertaining to Atlantic salmon aquaculture should be submitted under Priority A.

Develop effective enhancement strategies for marine and anadromous species to help in the recovery of wild stocks.

F. Fisheries Socioeconomics

Improve the understanding of the socioeconomic aspects of fisheries to increase the knowledge base for making decisions that affect commercial, recreational, and subsistence fishing. Examples could include, but are not limited to, ethnographic baseline data on specific fishing communities; cost-income data; analyses of the socioeconomic impacts of specific management measures in certain fisheries; analyses of factors influencing demand for recreational fishing trips by anglers; and, market analyses to determine factors that influence demand and supply of specific seafood products, including imports.

Such initiatives must be discrete projects that can be carried out within an 18–month maximum project period. Studies must not duplicate or overlap any other ongoing socioeconomic data collection and analyses programs. We encourage projects that are industry-

sponsored but involve the academic community or management agencies.

Note, depending on the type of activity you propose, you may be required to obtain approval under the PRA for surveys, etc., related to this priority. You should consider this when preparing your application and estimated time lines.

III. How to Apply

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the S-K Program. Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and nine signed copies of your application.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Form 424 and 424B (4–92) as the cover sheet for each project. (In order to complete item 16 of Standard Form 424, see section V.A.3. of this document.)

B. Project Summary

You must complete NOAA Form 88–204 (10–01), Project Summary, for each project. You must list on the Project Summary form the specific priority to which the application responds (see section II. of this document).

C. Project Budget

You must submit a budget for each project, using NOAA Form 88–205 (10–01), Project Budget and associated instructions. You must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions. Specify estimates of the direct costs in the categories listed on the Project Budget form.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. For this solicitation, the total dollar amount of the indirect costs you propose in your application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Furthermore, the Federal share of the indirect costs you propose must not exceed 25 percent of the total proposed direct costs. If your application requests more than 25 percent of the total costs as Federal funds to cover indirect costs, the application will be returned to you and will not be considered for funding.

If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25–percent level up to the 100–percent level as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application. (See 66 FR 49919, October 1, 2001, for further information on indirect costs.)

We will not consider fees or profits as allowable costs in your application.

The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 15 pages long. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. Project goals and objectives. Identify the specific priority listed in section II to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. State what you expect the project to accomplish.

If you are applying to continue a project we previously funded under the S-K Program, describe in detail your progress to date and explain why you need additional funding. We will consider this information in evaluating your current application.

2. Project impacts. Describe the anticipated impacts of the project on the fishing community in terms of reduced bycatch, increased product yield, or other measurable benefits. Describe how you will make the results of the project available to the public.

3. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring: certification under state Coastal Zone Management Plans; section 404 or section 10 permits issued by the Corps of Engineers; experimental fishing or other permits under FMPs; environmental impact statements to meet the requirements of the National Environmental Policy Act; scientific permits under the ESA and/or the Marine Mammal Protection Act; or Magnuson-Stevens Act EFH consultation if the project may adversely affect areas identified as EFH. Describe the relationship between the project and these FMPs or activities, and list names and addresses of persons providing this information. You can get information on these activities from the NMFS Regions (see Section I.H., Application Addresses). If we select your project for funding, you are responsible for complying with all applicable requirements.

6. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific

activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities.

This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly members of fishing communities, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the fishing community in determining which applications to fund.

8. Project management. Describe how the project will be organized and managed. Identify the principal investigator and other participants in the project. If you do not identify the principal investigator, we will return your application without further consideration. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) of the principal investigator(s) and any consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations.'' If you select a consultant and/or a subcontractor prior to submitting an application, indicate the process that you used for selection.

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents) that will help us to understand the project and the problem/opportunity you seek to address.

IV. Screening, Evaluation, and Selection Procedures

A. Initial Screening of Applications

When we receive applications at any of the NMFS Regional Offices, we will first screen them to ensure that they were received by the deadline date (see DATES); include OMB form 424 signed and dated by an authorized representative (see section III. A. of this document); were submitted by an eligible applicant (see section I.D. of this document); provide for at least a 10–percent cost share but not more than 50 percent (see section I.F. of this document); involve an eligible activity (see section I.C. of this document); address one of the funding priorities for species under Federal or State jurisdiction (see section II.A.-F. of this document); include a budget and a statement of work including milestones (see sections III.C. and III.D.6 of this document); and identify the principal investigator (see section III D.8. of this document). Note, if we find, at any point in the process, that your application does not fully conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration.

We do not have to screen applications before the submission deadline, nor do we have to give you an opportunity to correct

any deficiencies that cause your application to be rejected.

B. Evaluation of Proposed Projects

1. Technical Evaluation

After the initial screening, we will solicit individual evaluations of each project application from three or more appropriate private and public sector experts to determine the technical merit. No consensus recommendations will be made. Reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing. They will assign scores ranging from a minimum of 60 (poor) to a maximum of 100 (excellent) to applications based on the following criteria, with weights shown in parentheses:

a. Soundness of project design/conceptual approach. Applications will be evaluated on the conceptual approach; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project will be evaluated. The project's principal investigator and other personnel, including consultants and contractors participating in the project, will be evaluated in terms of relevant experience and qualifications. Applications that include consultants and contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. (25 percent)

c. Project evaluation. The methods you propose to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined for potential effectiveness. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be taken into account. (15 percent)

Following the technical review, we will determine the weighted score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will rank applications in descending order by their final technical scores and determine a ''cutoff'' score that is based on the amount of funds available for grants. We will eliminate from further consideration those applications that scored below the cutoff.

2. Constituent Panel(s)

For those applications at or above the cutoff technical evaluation score, we will solicit individual comments and evaluations from a panel or panels of three or more representatives selected by the Assistant Administrator for Fisheries (AA), NOAA. Regardless of the total number of panels convened, we will convene a separate panel for projects addressing Priority A dealing with Atlantic salmon aquaculture. Panel members will be chosen from the fishing industry, state government, non-government organizations, and others, as appropriate. We will provide panelists with a summary of the technical evaluations, and, for applications to continue a previously funded project, information on progress on the funded work to date.

Each panelist will evaluate the applications in terms of the significance of the problem or opportunity being addressed, the degree to which the project involves collaboration with fishing community members and other appropriate collaborators, proposed means to disseminate project results, and the merits of funding each project. Each panelist will provide a rating from 0–4 (poor to excellent) for each project, and provide comments if they wish. Panelists will not reach consensus on recommendations or scores. Panel members will be required to certify that

they do not have a conflict of interest and that they will maintain confidentiality of the panel deliberations.

Following the Constituent Panel meeting, we will average the individual ratings for each project. We will then develop a ranking of projects based on the individual ranks within each of the priority areas. Final rankings will consider projects addressing Priority A separately from projects addressing priorities B through F.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, we will use this information, along with input from the NMFS Regional Administrators (RAs) and Office Directors (ODs), to develop recommendations for project funding. RAs/ODs will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments.

The AA will review the funding recommendations and comments of the RAs/ODs and determine the projects to be funded. The AA will make two sets of final funding decisions: one for proposals addressing priority A and a second set for those addressing Priorities B through F. In making the final selections, the AA may consider costs, geographical distribution, and duplication with other federally funded projects. Awards are not necessarily made to the highest ranked applications.

We will notify you in writing whether your application is selected or not. Furthermore, if your application is not selected, we will return it to you. Successful applications will be incorporated into the award document.

The exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in preaward negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

A. Your Obligations as an Applicant

The Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements published in the **Federal Register**, October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the OMB in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, Commerce will provide further information on implementation of Executive Order 13202.

In addition, you must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal(s), including one signed original and nine signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

3. Complete Item 16 on Standard Form 424 (4–92) regarding clearance by the State Point Of Contact (SPOC) established as a result of Executive Order 12372. You can get the list of SPOCs from any of the NMFS offices listed in this document or from the S-K Home Page (see section I.I. of this document). It is also included in the CFDA. You must contact the SPOC, if your state has one, to see if applications to the S-K Program are subject to review. If SPOC clearance is required, you are responsible for getting that clearance in time to submit your application to the S-K Program by the deadline (*see* **DATES**).

4. Complete Standard Form 424B (4–92), ''Assurances--Non-construction Programs.''

B. Your Obligations as a Successful Applicant (Recipient)

If you are awarded a grant or cooperative agreement for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are required to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the S-K Home Page. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from the electronic submission requirement on a case-by-case basis.

We will provide you with OMB-approved formats for the semiannual and final reports.

5. In addition to the final report in section V.B.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

We reserve the right to conduct a post-closeout evaluation of project results in terms of demonstrated benefit to fishing communities, as indicated by awareness of the work conducted, state of knowledge advanced, adoption of techniques or methods developed, implementation of plans prepared, etc. Evaluation may be conducted by appropriate individuals within or outside NOAA. If this process requires any additional information from you, we will first obtain the proper clearances under the PRA.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(2))or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, because a notice is not a regulation, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act or any other law, and none has been prepared.

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

This document contains collection-of-information requirements subject to the PRA. The use of Standard Forms 424, 424B, and SF-LLL (Disclosure of Lobbying Activities) have been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0040, and 0348–0046. NOAA-specific requirements have been approved under OMB control number 0648–0135. These requirements and their estimated response times are 1 hour for a project summary, 1 hour for a budget form, 2.5 hours for a semiannual report, and 13 hours for a final report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Alicia Jarboe, F/SF2, Room 13112, 1315 East West Highway, Silver Spring, MD 20910–3282.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

A solicitation for applications can also be obtained through ''FedBizOpps.''

Dated: May 8, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 02–12029 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050802E]

North Pacific Fishery Management Council; Council Chairmen's Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual meeting of Regional Fishery Management Council and NMFS representatives.

SUMMARY: Representatives of the eight Regional Fishery Management Councils will meet with representatives of NMFS in Sitka, AK.

DATES: The meetings will be held on Tuesday, May 28, 2002 through Friday, May 31, 2002.

ADDRESSES: The meetings will be held at the Harrigan Centennial Hall, 330 Harbor Drive, Sitka, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Gail Bendixen, NPFMC, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Tuesday, May 28, Council representatives and NMFS representatives will meet separately to prepare for the joint meetings Wednesday and Thursday, May 29-30. Council representatives will meet again on Friday morning, May 31, to finalize any recommendations resulting from the joint meetings.

The tentative agenda includes the following subjects for discussion:

1. Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act and other legislative initiatives.

2. Procedure and schedules for approval of Council statements of operating policies and procedures.

3. Discussion of Marine Protected Area initiative.

4. The ability of NMFS to meet mission requirements.

5. Discussion of education and public outreach campaign.

6. International trade negotiations, capacity reduction assessments, and general litigation influences.

7. Reports:

(a) NMFS reports on cooperative research funds and electronic logbook program.

(b) U.S. Coast Guard report on fisheries enforcement and rescue activities.

(c) Update on the 2002 annual Status of Stocks report to Congress and discussion of process and format for future reports.

(d) Status of the Coral Reef Task Force and funding issues.

(e) Status report on electronic rulemaking initiative.

(f) Status report on Essential Fish Habitat lawsuit and development of environmental impact statements.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 8, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12031 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a work session, which is open to the public.

DATES: The CPSMT will meet Wednesday, May 29, 2002, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room (D–203) at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; (858) 546–7000.

Council address: Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review the current Pacific mackerel stock assessment and develop harvest guideline and seasonal structure recommendations for the 2002–2003 fishery. The 2002 CPS stock assessment and fishery evaluation (SAFE) document might also be discussed.

Although nonemergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meeting. CPSMT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12032 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Area the Public Is Requested to Temporarily Avoid During Coral Reef Restoration Activities in the Florida Keys National Marine Sanctuary (FKNMS)

AGENCY: National Marine Sanctuaries Program (NMSP), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Area to be Temporarily Avoided.

SUMMARY: NOAA requests that users of the Florida Keys National Marine Sanctuary (FKNMS) avoid, from May 15, 2002 through June 28, 2002, an area of approximately 0.58 acres marked by construction buoys in the vicinity of 25°0.67′ N, 80°22.37′ W, which is at ''Molasses Reef,'' and is located 6 nautical miles (11.1 km) off the southeastern portion of Key Largo, Florida. During this time, NOAA and authorized contractors will be conducting physical restoration activities of a coral reef where the M/V Wellwood grounded in August 1984. The public is requested to avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.,* barges and cranes), moorings, surface air supply hoses of divers and increased localized boat traffic. The intent of this notice is to ensure the timely and successful completion of the restoration and the protection of life and property during these complex activities.

DATES: The public is requested to avoid the area from May 15, 2002 through June 28, 2002. If less or more time is needed, NOAA will so inform the public. Public notice of this request also will be provided through local news media, a Notice to Mariners, and posting of placards or bulletin boards in public areas in Key Largo.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, Program Manager, Resource Protection Team, National Marine Sanctuaries Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 11th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3125, ext. 109.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1984, the M/V Wellwood, a 122-meter Cypriot-registered freighter, ran aground on the upper forereef of Molasses Reef within the FKNMS. The grounding site is a bank reef located 6 nautical miles (11.1 km) off the southeast portion of Key Largo, Florida (entered at approximately 25°0.67′ N, 80°22.37′ W). The impact of the grounding and the shifting of the vessel created large scars on the Molasses Reef forereef. Significant injuries were inflicted to the coral reef colonies, substrate, and other resident marine organisms such as sponges and sea fans. The unconsolidated coral rubble and ship debris have been removed. Storm events, including Hurricane Georges in the autumn of 1998, have caused additional damage to the grounding site.

Section 312 of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1443) authorizes NOAA to pursue claims for response costs and damages when sanctuary resources are destroyed, lost or injured. Funds recovered under section 312 are used to restore, replace or acquire equivalent sanctuary resources. As part of the restoration process at the site of the M/V Wellwood grounding, NOAA and its authorized contractor will be placing reef modules and tremie concrete to rebuild the physical structure of the damaged coral reef. This activity will occur from April 15, 2002 through June 28, 2002.

Because divers, moorings, heavy construction materials and equipment (*e.g.,* barges and cranes) and increased localized boat traffic will be present during the restoration activity, NOAA requests the public to avoid an area of approximately 0.58 acres where the restoration activity will occur. Five to seven, recreational mooring buoys will be removed from the work area and the nearby vicinity. The work area will be marked by construction buoys. The buoys will be set about 30 feet beyond the barge tie down locations, and create an area approximately 200 feet by 150 feet, with the longer axis oriented in a NE–SW direction, around the grounding site (25°0.67′ N, 80°22.37′ W).

The intent is to provide an area for the conduct of these important restoration activities; protect the life and property of construction crews and Sanctuary users while heavy construction materials and equipment (*e.g.*, barges and cranes) are in the area; protect moorings which will be used at the site to stabilize the barges; protect the surface air supply hoses of the divers and SCUBA crew who will be conducting the restoration activities; and ensure timely and successful completion of the restoration. The area that the public is requested to avoid is the minimum area necessary to moor the barges and includes buffer zones to moor support vessels and provide an extra margin for public safety during the restoration activities. The time period for which the public is requested to avoid the restoration site is the expected time necessary to complete the construction activities. If less or more time is needed, NOAA will so notify the public.

During the spring of 2002, one-on-one contact was made with local dive operators, a public meeting was held to explain the restoration project and make the public aware of the area it would be requested to temporarily avoid. Additionally, NOAA issued press releases to the local newspapers and radio stations which have covered the restoration planning process and which have provided notice of NOAA's request for the public to avoid the restoration area.

Locations and Boundaries of the Area the Public Is Requested to Avoid

The area which the public is requested to avoid is located approximately 6 nautical miles offshore the southeast portion of Key Largo, Florida (centered near 25°0.67′ N, 80°22.37′ W). The total area is approximately 0.58 acres. The boundary of this area will be marked by construction buoys.

The area is bounded by the following coordinates:

Latitude and Longitude

A: 25°00′37.96364″ N 80°22′14.60425″ W
B: 25°00′31.20173″ N 80°22′22.54159″ W
C: 25°00′45.20646″ N 80°22′22.54159″ W
D: 25°00′38.44445″ N 80°22′29.96212″ W

Dated: May 8, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–12004 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050302A]

Endangered Species; Permit No. 1351

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Frank A. Chapman, Department of Fisheries and Aquatic Sciences, University of Florida, University of Florida, 7922 N.W. 71 St., Gainesville, Florida 32653, has been issued a permit to take Shortnose Sturgeon (*Acipenser brevirostrum*) for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Lillian Becker, (301)713–2289).

SUPPLEMENTARY INFORMATION: On September 17, 2001, notice was published in the **Federal Register** (66 FR 48031) that a request for a scientific research/enhancement permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The Holder was issued a four year permit [#1351] to identify the physical, chemical, and biological parameters necessary for optimal survival and growth of shortnose sturgeon. The research activities proposed in this investigation address the goals and objectives of the shortnose sturgeon recovery plan.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 8, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–12034 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

In the Matter of DAISY MANUFACTURING COMPANY Inc.; d/b/a/ Daisy Outdoor Products, 400 West Stribling Drive, Rogers, Arkansas 72756; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATES: This notice announces a prehearing conference to be held in the matter of Daisy Manufacturing Company, Inc. on June 7, 2002 at 10 a.m.

ADDRESSES: The prehearing conference will be in hearing room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in administrative proceeding under section 15 of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2064 and section 15 of the Federal Hazardous Substances Act (''FHSA''), 15 U.S.C. 1274, captioned CPSC Docket No. 02–2, In the Matter of DAISY MANUFACTURING COMPANY, Inc. doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding the first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred to the Code of Regulations citation listed above for identification of the issues to be raised at the conference and is advised that the date, time and place of the hearing also will be established at the conference.

Substantively, the issues being litigated in this proceeding are described by the Presiding Officer to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged within a ''virtual magazine,'' or fail to feet into the firing chamber, with the consequences that one may fire or shake the gun without receiving any visual or audible indication that is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena means that the gun is ''defective'' within the meaning of section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274. The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a ''defect'' under the CPSA and the FHSA and presents a ''substantial product hazard,'' creating a substantial risk of injury to consumers, within the meaning of section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(12), and presents a substantial risk of injury of children under section 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should be mindful that these are allegations only and the CPSC bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: May 9, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–12044 Filed 5–13–02; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 89, Wednesday, May 8, 2002, page 30879

Previously Announced Time and Date of Meeting: 10 a.m., Wednesday, May 15, 2002.

Changes in Meeting: The Prehearing Conference, In the Matter of DAISY MANUFACTURING COMPANY Inc., will not be held on Wednesday, May 15, 2002. The Prehearing Conference has been rescheduled for Friday, June 7, 2002 at 10 a.m.

For a recorded message containing the latest agenda information, call (301) 504–0709.

Contact Person for Additional Information: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 9, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–12043 Filed 5–9–02; 3:15 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, May 21, 2002, 9:30 a.m.–12:30 p.m.

PLACE: John F. Kennedy School of Government, 79 John F. Kennedy Street (Harvard Square), Cambridge, MA 02183.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.
II. Consideration of Prior Meeting's Minutes.
III. Legislative and future management actions related to the Administration's 'Principles and Reforms for a Citizen Service Act: Fostering a Culture of Service, Citizenship, and Responsibility'.
IV. Social Capital and Civic Engagement.
V. Learn and Serve presentation.
VI. MA Service Alliance.
VII. National Ten Point Leadership Foundation.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Ms. Michele Tennery, Senior Associate, Corporation for National and Community Service, 8th Floor, Room 8513, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 125. Fax (202) 565–2784 TDD: (202) 565–2799. E-mail: *MTennery@cns.gov.*

Dated: May 10, 2002.

Frank R. Trinity,

General Counsel, Corporation for National and Community Service.

[FR Doc. 02–12095 Filed 5–10–02; 11:30 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 7, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 15, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 23, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they

need to succeed when they enter kindergarten.

Additional Information: The Department expects to receive a large number of applications, and wishes to ensure that the funded applications are of the highest quality, and plans to use a two-phase application process (with a Pre-Application and Full Application). This two-phase application process will put less burden on the majority of applicants by requiring only a short concept paper from them, and will also have the benefit of providing helpful comments from peer reviewers to strengthen proposals from applicants invited to submit Full Applications. It would be difficult without emergency paperwork clearance for the Department to award these grants by December 2002. Based upon the unexpected delay and the public harm that might otherwise occur with delaying grant awards, the Department is requesting approval by May 7, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 12,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting ''Browse Pending Collections'' and clicking on link number. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11960 Filed 5–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 13, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 8, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Integrated Postsecondary Education Data System (IPEDS), Minimum Data Set (MDS).

Frequency: One time.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 9,924.

Burden Hours: 2,232.

Abstract: IPEDS is a system of surveys designed to collect basic data from postsecondary institutions in the United States. To date, the main focus of IPEDS has been Title IV institutions, but institutions that do not participate in these federal student financial aid programs are becoming an increasingly important source of educational opportunity in the country. However, the scope and nature of this group of non-Title IV institutions is not well known. In order to arrive at a statistical estimate of the number of non-Title IV institutions nationwide, IPEDS proposes to conduct an area search to identify these institutions, and to collect a Minimum Data Set of items from them. These data will be made publicly available through a prototype Web-based data access system.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1959. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–5359 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11932 Filed 5–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–264]

Application to Export Electric Energy; ENMAX Energy Marketing Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: ENMAX Energy Marketing Inc. (ENMAX) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 29, 2002.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 19, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from ENMAX to transmit electric energy from the United States to Canada. ENMAX is an Alberta corporation having its principal place of business at Calgary, Alberta, Canada. ENMAX is a power marketer and is a wholly-owned subsidiary of ENMAX Energy Corporation, which in turn is a wholly-owned subsidiary of ENMAX Corporation. ENMAX currently participates in the wholesale trading of energy within Canada. ENMAX does not own or control any electric power generation or transmission facilities and does not have a franchised service area. Further, ENMAX requests that consideration of the application be expedited so that it may participate in the Alberta market that has recently experienced some supply uncertainty and price volatility.

ENMAX proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by ENMAX, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

ENMAX has requested expedited processing of its application so that electric power exports requested herein may help mitigate some supply uncertainties and price volatilities occurring in the Alberta market. Accordingly, DOE has set a 15-day comment period for this proceeding.

Procedureal Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the ENMAX application to export electric energy to Canada should be clearly marked with Docket EA–264. Additional copies are to be filed directly with Darin L. Lowther, Manager, Regulatory Affairs, ENMAX Energy Marketing Inc., 2808 Spiller Road, SE., Calgary, Alberta, Canada, T2G 4H3, AND Jerry L. Pfeffer, Energy Industry Advisor, Skadden, Arps, Slate, Meagher & Flom, LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home Page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on May 8, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–11931 Filed 5–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–265]

Application to Export Electric Energy; Ontario Energy Trading International Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Ontario Energy Trading International Corp. (Ontario Energy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 29, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 26, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Ontario Energy to transmit electric energy from the United States to Canada. Ontario Energy is a Delaware corporation having its principal place of business at Toronto, Ontario, Canada. Ontario Energy is in the business of marketing electricity in the United States and Canada and periodically exports electricity to which it has title into Canada for sales to Canadian utilities, power marketers and end-use customers. Ontario Energy has no franchised service territory in the United States.

Ontario Energy is an indirect, wholly-owned subsidiary of Ontario Power Generation Inc., (OPG) a Canadian corporation headquartered in Toronto,

Ontario, Canada. Ontario Energy's direct parent is Ontario Energy Trading, Inc., a Delaware corporation, which in turn is owned by Ontario Power Generation Energy Trading, Inc., an Ontario corporation. OPG, through various subsidiary corporations, owns and operates power plants and related generation assets. OPG does not own transmission or distribution assets. OPG's generation assets previously were owned by Ontario Hydro, the former government-owned utility providing generation, transmission and certain distribution services in Ontario.

Ontario Energy proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Engage America, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

The applicant anticipates that the electric power market in the Province of Ontario will be opened to competition on May 1, 2002. Ontario Energy has requested expedited processing of its application so that it may participate in this competitive market during the summer peak period. Accordingly, DOE has set a 15-day comment period for this proceeding.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Ontario Energy application to export electric energy to Canada should be clearly marked with Docket EA–265. Additional copies are to be filed directly with Joel Singer, Vice President, Regulatory Affairs, Ontario Power Generation Inc., 700 University Avenue, Toronto, Ontario M5G 1X6 Canada AND Jerry Pfeiffer, Energy Industries Advisor, Victor A. Contract, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on May 8, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–11930 Filed 5–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM96–1–019, RP02–336–000, RP02–324–000, RP02–234–000, RP02–325–000, RP02–323–000, RP02–326–000, RP02–328–000]

Standards for Business Practices of Interstate Natural Gas Pipelines; et al.; Notice of Compliance Filing

May 8, 2002.

Chandeleur Pipe Line Company
Clear Creek Storage Company, L.L.C.
Discovery Gas Transmission LLC
Overthrust Pipeline Company
Paiute Pipeline Company
Questar Pipeline Company
TransColorado Gas Transmission Company

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–019, Order No. 587–N.[1] These revised tariff sheets to be effective July 1, 2002, implements Commission regulation 284.12(c)(1)(ii)(B) that requires that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The filings implement the first phase of compliance with Order No. 587–N by implementing recalls of scheduled capacity for the Timely and Evening Nomination Cycles and for recalls of unscheduled capacity at any of the four nomination cycles.

Any person desiring to become a party in a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11994 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (March 18, 2002), FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (March 11, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1685–000]

Cinergy Energy Services, Inc.; Notice of Filing

May 8, 2002.

Take notice that on May 1, 2002, Cinergy Services, Inc. (Cinergy) on behalf of the Cincinnati Gas and Electric Company tendered for filing a Wholesale Market-Based Service Agreement under its Wholesale Market-Based Power Sales Standard Tariff, No.

9–MB (the Tariff) entered into with EnergyUSA-TPC Corp.

Cinergy and EnergyUSA–TPC Corp. are requesting an effective date of May 1, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11993 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–163–002]

Florida Gas Transmission Company; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 19, 2002, Florida Gas Transmission Company (FGT) tendered for filing additional documentation and support for the proposed fuel retention percentages as directed by Commission letter order issued March 28, 2002, (March 28 Order) in this proceeding. By filing this response, FGT is not agreeing that its lost and unaccounted-for gas percentages, or the variations in these percentages from period to period, are in any way abnormal or unreasonable, as suggested by the wording in the March 28 Order. FGT is filing concurrently herewith a Request for Clarification and/or Rehearing of the Commission's March 28 Order on this point.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. As directed in the March 28, 2002 order, all such protests must be filed on or before May 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12000 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–006]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

May 8, 2002.

Take notice that on May 3, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective May 1, 2002.

Substitute First Revised Sheet No. 3614

Gulf South filed the above referenced tariff sheet to comply with the Commission Order issued April 23, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11997 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–037]

Northern Natural Gas Company; Notice of Negotiated Rates

May 8, 2002.

Take notice that on May 3, 2002 Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 4, 2002:

Twenty-Fourth Revised Sheet No. 66
Fifteenth Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11996 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–334–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 8, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

Fifth Revised Volume No. 1

Sixteenth Revised Sheet No. 54
Third Revised Sheet No. 54A
Fourteenth Revised Sheet No. 61
Fourteenth Revised Sheet No. 62
Fourteenth Revised Sheet No. 63
Fourteenth Revised Sheet No. 64
Third Revised Sheet No. 300A
Sixth Revised Sheet No. 301

The revised tariff sheets are being filed in accordance with Section 53 of Northern's Tariff. This filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2002, based on actual data for the 12 month period ended March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12002 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1258–001]

Rainy River Energy Corporation-Taconite Harbor; Notice of Filing

May 8, 2002.

Take notice that on May 1, 2002, Rainy River Energy Corporation-Taconite Harbor (RR–TH) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Service Agreement No. 1 under RR–TH rate Schedule No. 1 between Rainy River Energy Corporation and RR–TH.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11992 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–003]

Reliant Energy Gas Transmission Company; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 29, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, tariff sheets to comply with the policy directives of the Commission's March 29, 2002 ''Order on Order No. 637 Settlement.'' The March 29 Order resolved REGT's Order No. 637 proceeding, Docket No. RP00–482–000, and two related proceedings, Docket Nos. RP01–12–000 and RP01–317–000.

REGT states that the purpose of this filing is to comply with the Commission's March 29 2002 Order in Docket Nos. RP00–482–000, RP01–12–000 and RP01–317–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11998 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–483–001]

Sabine Pipe Line LLC; Notice of Compliance Filing

May 8, 2002.

Take notice that on May 3, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of June 3, 2002:

First Revised Sheet No. 101 *
Original Sheet No. 101A *
First Revised Sheet No. 207
Original Sheet No. 207A
First Revised Sheet No. 208
Original Sheet No. 208A
First Revised Sheet No. 209 *
Original Sheet No 209A *
First Revised Sheet No. 210 *
First Revised Sheet No. 229
Original Sheet No. 229A
First Revised Sheet No. 233
Original Sheet No. 233A
First Revised Sheet No. 234 *
Original Sheet No. 234A
First Revised Sheet No. 237 *
First Revised Sheet No. 248A *
First Revised Sheet No. 249
Second Revised Sheet No. 252 *
Second Revised Sheet No. 253 *
Second Revised Sheet No. 254 *
Original Sheet No. 254A *
First Revised Sheet No. 266 *
Original Sheet No. 266A *
Second Revised Sheet No. 267 *
First Revised Sheet No. 267A *
First Revised Sheet No. 270 *
First Revised Sheet No. 470 *

Sabine states that the tariff sheets are being filed to comply with the Commission's April 3, 2002 order (April 3 Order) on Sabine's compliance with Order No. 637 in Docket Nos. RP00–483–000 and RP00–603–000. The tariff sheets incorporate all of the pro forma provisions approved by the April 3 Order and proposed changes to certain provisions as directed by the April 3 Order. Tariff sheets containing proposed changes are marked with an asterisk.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11999 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–171–002]

Transcontinental Gas Pipeline Corporation; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 26, 2002, Transcontinental Gas Pipeline Corporation (Transco) tendered for filing additional documentation and support for the proposed fuel retention percentages as directed by Commission letter order issued March 27, 2002, in this proceeding.

Transco states that copies of the filing are being served to all parties in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12001 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–66–000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company; Central Illinois Generation, Inc.

[Docket No. EC02–66–000; Docket No. EL02–85–000]

Take notice that on April 29, 2002 Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, IL 61602, and its subsidiary, Central Illinois Generation, Inc. (CIGI), 17751 North CILCO Road, Canton, IL 61520, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer jurisdictional assets. In connection with CILCO's transfer to CIGI of the Edwards, Duck Creek, and Sterling generation facilities with a net generating capacity of 1,136 MW, CILCO will transfer jurisdictional transmission assets associated with the generation facilities. This disposition will be accomplished by a contribution of assets. In addition, CIGI requests waiver of the Commission's Standards of Conduct and OASIS requirements in Order Nos. 888 and 889.

Comment Date: May 20, 2002.

2. Western Area Power Administration, Pacific Gas and Electric Company and Trans-Elect, Inc.

[Docket No. ER02–1672–000]

Take notice that on April 30, 2002, Western Area Power Administration, Pacific Gas and Electric Company and Trans-Elect, Inc. (Project Participants) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act and Section

35.13 of the Commission's Rules and Regulations, the Path 15 Upgrade Project Participant's Letter Agreement . This Letter Agreement is an essential ingredient in the Path 15 Upgrades Project. It identifies the parties' obligations, expected rate methodologies and a blueprint for continued progress. The Project Participants state that it has served copies of this filing upon the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: May 21, 2002.

3. Kansas Gas and Electric Company

[Docket No. ES02–21–002]

Take notice that on April 29, 2002, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

4. Kansas Gas and Electric Company

[Docket No. ES02–22–002]

Take notice that on April 29, 2002, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

5. Western Resources, Inc.

[Docket No. ES02–23–002]

Take notice that on April 29, 2002, Western Resources, Inc. submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11948 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–67–000, et al.]

Virginia Electric and Power Company et al.; Electric Rate and Corporate Regulation Filings

May 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric And Power Company and Dominion Energy Marketing, Inc.

[Docket No. EC02–67–000]

Take notice that on May 1, 2002, Virginia Electric and Power Company (Dominion Virginia Power) and Dominion Energy Marketing, Inc. (Dominion Marketing), (collectively, the Applicants) submitted a joint application under Section 203 of Federal Power Act to request authorization and approval for Dominion Virginia Power to transfer by assignment to Dominion Marketing obligation and rights in a Power Sales Agreement with United Illuminating Company (United Illuminating). The Applicants request approval of the assignment within 60 days from the date of this filing.

The Applicants state that copies of this joint application have been served upon United Illuminating and the state regulatory commissions of Connecticut and Virginia.

Comment Date: May 28, 2002.

2. Southern Company Services, Inc.

[Docket No. ER96–780–005]

Take notice that on April 30, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (collectively referred to as the Southern Operating Companies), submitted an updated generation dominance analysis in connection with the Southern Operating Companies' market-based rate authority.

Comment Date: May 21, 2002.

3. Arizona Public Service Company

[Docket No. ER99–3288–006]

Take notice that on April 30, 2002, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission), an informational report on the first quarter for 2002 refund payments to eligible wholesale customers under the Company's Fuel Adjustment Clause.

Comment Date: May 21, 2002.

4. ISO New England Inc.

[Docket No. ER01–316–006]

Take notice that on April 30, 2002, ISO New England Inc. filed its Index of Customers for the first quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: May 21, 2002.

5. New York Independent System Operator, Inc.; Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.

[Docket Nos. ER01–3009–007 and ER01–3153–007; Docket No. EL00–90–007]

Take notice that on May 1, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff in order to change the collateral requirement applicable bids of non-physical (*i.e.* virtual) generation and load into the Day-Ahead Market that are settled in the Real-Time Market (Virtual Transactions), pursuant to the Commission's order issued on March 14, 2002, in the above-captioned dockets. The NYISO has requested an effective date of May 1, 2002, for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment Date: May 22, 2002.

6. Rainy River Energy Corporation-Taconite Harbor

[Docket No. ER02–1258–001]

Take notice that on May 1, 2002, Rainy River Energy Corporation-Taconite Harbor (RR–TH) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Service Agreement No. 1 under RR–TH rate Schedule No. 1 between Rainy River Energy Corporation and RR–TH.

Comment Date: May 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1289–001]

Take notice that on April 30, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners jointly submitted for filing a substitute page of the Midwest ISO Agreement regarding the implementation of the revenue distribution for revenues from the Regional Through and Out Rate (RTOR) surcharge (RTOR Adder) to Michigan Electric Transmission Company, LLC once it becomes a transmission owner in the Midwest ISO. The substitute page states the percentages for revenue distribution without rounding to the next full percentage point.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001), with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: May 21, 2002.

8. Pacific Gas and Electric Company

[Docket No. ER02–1339–001]

Take notice that on May 1, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 2001, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for First Revised PG&E Rate Schedule FERC Nos. 88, 91, and 136.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: May 22, 2002.

9. Cleco Power LLC

[Docket No. ER02–1640–001]

Take notice that on May 1, 2002, Cleco Power LLC amended the Interconnection and Operating Agreement between Cleco Power LLC, Cleco Midstream Resources LLC, and Columbian Chemicals Company related to a new cogeneration facility to be constructed at Columbian's plant site in St. Mary Parish, Louisiana that was filed on April 25, 2002. The Amendment provides a substitute Appendix C to replace an incorrectly formatted one-line diagram included in the original filing.

Comment Date: May 22, 2002.

10. Tampa Electric Company

[Docket No. ER02–1673–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated caps on energy charges for emergency assistance service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, as represented by agent Southern Company Services, Inc. (collectively, Southern Companies).

Tampa Electric requests that the revised rate schedule sheets be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment Date: May 21, 2002.

11. Tampa Electric Company

[Docket No. ER02–1674–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated transmission service rates under its agreements to provide qualifying facility transmission service for Cargill Fertilizer, Inc. (Cargill) and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the revised sheets containing the updated transmission service rates be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cargill, Auburndale, and the Florida Public Service Commission.

Comment Date: May 21, 2002.

12. American Transmission Systems, Inc.

[Docket No. ER02–1675–000]

Take notice that American Transmission Systems, Inc. (ATSI) on April 30, 2002 tendered for filing four related Interconnection Agreements between it and various NRG generating companies. The agreements govern the interconnection to the ATSI transmission system of four generating plants that are to be sold to the NRG companies following approval of the Commission. The proposed effective date of the agreements is to coincide with the closing date of the facility sale. Copies of the filing were served upon the NRG companies who are parties to the agreements.

Comment Date: May 21, 2002.

13. Southern California Edison Company

[Docket No. ER02–1676–000]

Take notice that on April 30,2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and Cabazon Wind Partners, LLC (Cabazon).

The Letter Agreement specifies the terms and conditions under which SCE will begin engineering, design, and procurement of materials and equipment for a new 450-foot 115 kV line tap from the existing Garnet-Banning-Maraschino-Windpark 115 kV line to Cabazon's generating facility and a mini remote terminal unit in the facility. Also, SCE will prepare specifications and provide engineering and construction review for a new substation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Comment Date: May 21, 2002.

14. Exelon Generation Company, LLC

[Docket No. ER02–1677–000]

Take notice that on April 30, 2002 Exelon Generation Company, LLC, tendered for filing a transaction agreement under its market-based rate wholesale power sales tariff under which it will make sales of energy and capacity to Aquila Merchant Services.

Comment Date: May 21, 2002.

15. Tampa Electric Company

[Docket No. ER02–1678–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated rates for emergency interchange service and scheduled/short-term firm interchange service under its interchange contracts with each of 17 other utilities.

Tampa Electric requests that the revised rate schedule sheets containing the updated rates for interchange service be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment Date: May 21, 2002.

16. Rochester Gas and Electric Corporation

[Docket No. ER02–1679–000]

Take notice that on April 30, 2002, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of FERC Rate Schedule No. 13 pursuant to Section 35.15 of the Commission's Rules, 18 CFR 35.15.

RG&E requests an effective date of July 1, 2002.

RG&E served copies of the filing on New York State Electric & Gas Corporation and the New York State Public Service Commission.

Comment Date: May 21, 2002.

17. NRG Northern Ohio Generating LLC

[Docket No. ER02–1680–000]

Take notice that on April 30, 2002, NRG Northern Ohio Generating LLC (NRG Northern Ohio) filed with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 an unexecuted Transition Power Purchase Agreement with FirstEnergy Solutions Corp., as Service Agreement No. 1 to NRG Northern Ohio's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 21, 2002.

18. MidAmerican Energy Company

[Docket No. ER02–1681–000]

Take notice that on April 30, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), the Capacity and Energy Confirmation Agreement (Agreement) between MidAmerican and Alliant Energy Corporate Services as agent for Wisconsin Power and Light Company, IES Utilities, and Interstate Power Company (collectively, Alliant). MidAmerican filed the Agreement as Service Agreement No. 5 under MidAmerican's FERC Electric Tariff original Volume No. 5.

MidAmerican requests an effective date of March 1, 2002.

Comment Date: May 21, 2002.

19. MidAmerican Energy Company

[Docket No. ER02–1682–000]

Take notice that on April 30, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Master Power Purchase and Sale Agreement (Agreement) between MidAmerican and Aquila Energy Marketing Corporation. MidAmerican filed the Agreement as Service Agreement No. 51 under MidAmerican's FERC Electric Tariff original Volume No. 5.

MidAmerican requests an effective date of November 1, 2001.

Comment Date: May 21, 2002.

20. New York State Electric & Gas Corporation

[Docket No. ER02–1683–000]

Take notice that on April 30, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 35.15 of the Commission's Rules, 18 CFR 35.15, a Notice of Cancellation of FERC Rate Schedule No. 54.

NYSEG requests that the filing be made effective July 1, 2002.

NYSEG served copies of the filing on Rochester Gas & Electric Corporation, the customer previously receiving service under FERC Electric Rate Schedule No. 54, and the New York State Public Service Commission.

Comment Date: May 21, 2002.

21. American Electric Power Service Corporation

[Docket No. ER02–1684–000]

Take notice that on May 1, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission), Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for RWE Trading Americas Inc., Select Energy, Inc. and UBS AG, London Branch, and a revised Network Integration Service Agreement for American Municipal Power—Ohio, Inc. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests that the Service Agreements be made effective on April 1, 2002.

A copy has been served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: May 22, 2002.

22. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–1686–000]

Take notice that on April 30, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing corrections to two service agreements under its FERC Electric Tariff, Original Volume No. 3. A copy of this filing has been served on the buyer under each service agreement and counsel to the WSPP.

Comment Date: May 21, 2002.

23. San Diego Gas & Electric Company

[Docket No. ER02–1687–000]

Take notice that on May 1, 2002, San Diego Gas & Electric (SDG&E) tendered for filing its limited section 205 Application for Approval of Increase to its Supplemental Surcharge Transmission Rate. Through this filing, SDG&E seeks to recover costs related to certain additional energy infrastructure security and reliability measures being implemented by SDG&E. SDG&E states in its application that it is adopting these security and reliability measures in response to recent terrorist activities and threats experienced by our country, and that its activities are consistent with the Commission's Statement of Policy on September 14, 2001, in docket PL01–6–000.

SDG&E requests an effective date of July 1, 2002 for its proposed increase to the Supplemental Surcharge Rate. The Supplemental Surcharge Rate was established by the Commission in docket ER01–3074–000 to enable SDG&E to recover the cost of certain transmission upgrades that provided increased reliability to the grid and relieved existing constraints on SDG&E's transmission system. SDG&E's current proposed increase to this rate will be passed on to California Independent System Operator (ISO) high voltage service and other Participating Transmission Owners based upon the Transmission Access Charges as described in Amendment 27 and 34 of the ISO Tariff. That is, on July

1, 2002, the ISO will incorporate the additional costs in its High Voltage Wheeling Access Charge and its Transition Charges, which charges or credits each Participating Transmission Owner High Voltage Transmission revenues.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and other interested parties.

Comment Date: May 22, 2002.

24. Central Illinois Generation, Inc.

[Docket No. ER02–1688–000]

Take notice that on May 1, 2002, Central Illinois Generation, Inc. (CIGI), 17751 North CILCO Road, Canton, IL 61520, tendered for filing a proposed Market Rate Power Sales and Resale Transmission Tariff. CIGI files this tariff so that it may engage in the sale at wholesale of electric energy at market-based rates. CIGI also tendered for filing a Power Supply Agreement and an Interconnection Agreement with Central Illinois Light Company.

Comment Date: May 22, 2002.

25. Dearborn Industrial Generation, LLC

[Docket No. ER02–1689–000]

Take notice that on May 1, 2002, Dearborn Industrial Generation, LLC (DIG) tendered for filing, pursuant to Rule 205, 18 CFR 385.205, petition for an order accepting a revised tariff sheet under its FERC Electric Tariff Original Volume No. 2 to be effective at the earliest possible time, but no later than July 1, 2002.

DIG intends to make sales of ancillary services at market-based rates, in addition to engaging in electric power and energy purchases and sales at market-based rates, which were authorized by FERC on February 27, 2001.

Comment Date: May 22, 2002.

26. Carolina Power & Light Company

[Docket No. ER02–1690–000]

Take notice that on May 1, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, PG&E Energy Trading-Power, L.P. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of April 10, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: May 22, 2002.

27. Cinergy Services, Inc.

[Docket No. ER02–1691–000]

Take notice that on May 1, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Minnesota Power to Split Rock Energy LLC. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Split Rock Energy LLC.

Comment Date: May 22, 2002.

28. Florida Power & Light Company

[Docket No. ER02–1692–000]

Take notice that on May 1, 2002 Florida Power & Light Company (FPL) tendered for filing proposed service agreements with NRG Power Marketing Inc., for Firm transmission service and Non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements become effective on May 1, 2002.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment Date: May 22, 2002.

29. Ameren Services Company

[Docket No. ER02–1693–000]

Take notice that on May 1, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and EnerStar Power Corporation d/b/a Edgar Electric Cooperative Association (EnerStar). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to EnerStar pursuant to Ameren's Open Access Tariff.

Comment Date: May 22, 2002.

30. UNITIL Power Corp.

[Docket No. ER02–1694–000]

Take notice that on May 1, 2002, UNITIL Power Corp. tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 2001 through December 31, 2001 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 2001 to December 31, 2001 and supporting rate development.

Comment Date: May 22, 2002.

31. Cabazon Wind Partners, LLC

[Docket No. ER02–1695–000]

Take notice that on May 1, 2002, Cabazon Wind Partners, LLC (Cabazon) applied to the Commission for acceptance of Cabazon's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations. Cabazon also submitted a long-term power purchase agreement between Cabazon and the California Department of Water Resources for acceptance as a service agreement under the market-based rate tariff.

Comment Date: May 22, 2002.

32. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–1696–000]

Take notice that on May 1, 2002, Rainy River Energy Corporation—Taconite Harbor (RRTH) tendered for filing a notice of cancellation of its FERC Electric Rate Schedule No. 1 under which it is authorized to transact at market-based rates. The rate schedule is being cancelled because RRTH is being merged into its ultimate parent, Minnesota Power, at which time RRTH's corporate existence will cease. RRTH requests that its notice of cancellation be accepted effective on or about May 1, 2002.

Comment Date: May 22, 2002.

33. ISO New England Inc.

[Docket No. ER02–1697–000]

Take notice that on May 1, 2002, ISO New England Inc. submitted as a Section 205 filing in the above docket revisions to Market Rule 11, with a requested effective date of three days following a Commission order accepting the proposed revisions.

Comment Date: May 22, 2002.

34. NRG Energy Center Dover LLC

[Docket No. ER02–1698–000]

On May 1, 2002, NRG Energy Center Dover LLC (NRG Dover) filed with the Federal Energy Regulatory Commission an Electricity Tolling Agreement dated June 1, 2001 with NRG Power Marketing, Inc., as Service Agreement No. 1 to NRG Dover's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 22, 2002.

35. Avista Corporation

[Docket No. ER02–1699–000]

Take notice that Avista Corporation (Avista) on May 1, 2002, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Second Revised Service Agreement No. 45, which is an Agreement for Firm and Non-Firm Point-to-Point Transmission Service Under Avista Corporation's Open Access Transmission Tariff—FERC Electric Tariff Volume No. 8 between Avista and Avista Energy, Inc. (Service Agreement).

The revisions to the Second Revised Service Agreement No. 45 herein consist of one change to Attachment A to the Service Agreement—the Agreement for Firm Point-to-Point Service between Plummer Forest Products, Inc. (Plummer) and Avista. The sole change is found in the first sentence of Section 3.2 and consists of extending the termination date from April 30, 2002 to termination upon sixty days advance written notice by either party.

Avista respectfully requests that the Commission accept the Second Revised Service Agreement No. 45 for filing and grant all waivers necessary to allow the Second Revised Service Agreement No. 45 to become effective May 1, 2002. Plummer is the sole customer affected by this Service Agreement and the waiver, if granted, will not affect any other rate or charge to any other customer.

Copies of the filing were served upon Avista Energy, Inc. and Plummer Forest Products, Inc., the parties to the Service Agreement.

Comment Date: May 22, 2002.

36. NEO California Power LLC

[Docket No. ER02–1700–000]

On May 1, 2002, NEO California Power LLC (NEO California) filed with the Federal Energy Regulatory Commission an Electricity Tolling Agreement dated June 1, 2001 with NRG Power Marketing, Inc., as Service Agreement No. 1 to NEO California's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 22, 2002.

37. PacifiCorp

[Docket No. ER02–1701–000]

Take notice that PacifiCorp on May 1, 2002, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Filing, and Mutual Netting/Settlement Agreements with Pinnacle West Capital Corporation and PPL EnergyPlus LLC.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: May 22, 2002.

38. New England Power Pool

[Docket No. ER02–1702–000]

Take notice that on May 1, 2002, New England Power Pool (NEPOOL) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act requesting acceptance of Amendment No. 3 to the Interim Independent System Operator Agreement (ISO Agreement) dated as of July 1, 1997 between ISO New England Inc. (ISO) and the NEPOOL Participants. The Amendment extends the term of the ISO Agreement by nine months, to March 31, 2003, with a further nine-month extension if the specific conditions identified in the ISO Agreement, as modified by the Amendment, are satisfied.

NEPOOL has requested that the Commission issue an order approving the Amendment on or before June 30, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: May 22, 2002.

39. Ameren Energy, Inc, Ameren Energy Generating Company, Union Electric Company dba AmerenUE

[Docket No. ER02–1703–000]

Take notice that on May 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with El Paso Merchant Energy, L.P. Ameren Energy seeks Commission acceptance of there service agreements effective April 15, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 22, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11991 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–8]

Office of Environmental Information Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and Draft Data Standard for Exchange of Tribal Identifier Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 45-day public comment period on two draft data standards: Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and Draft Data Standard for Exchange of Tribal Identifier Information. These draft standards each consist of a list of data elements, definitions for these elements, notes,and explanatory preamble language. The draft standards were developed by the partnership efforts of States, Tribes, and U.S. Environmental Protection Agency participating in the Environmental Data Standards Council (EDSC). The EDSC convened Action Teams consisting of representatives from EPA, States and Tribes to develop these core sets of data

elements to facilitate the sharing of information regarding reporting water quality results for chemical and microbiological analytes and the exchange of tribal identifiers information. The EPA and the EDSC invite comment on these standards from States, EPA, Tribes, database managers in the public and private sectors, and the general public with interest in development and use of data for reporting water quality results for chemical and microbiological analytes or the exchange of Tribal identifiers information.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: The record for these standards has been established under docket number W–02–02, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M St SW., Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Electronic Access: You may view and download the draft data standards and related explanatory material at the EDSC website at: *http://www.epa.gov/edsc/* in the area of the site marked ''Data Standards.'' The draft data standards can also be viewed and downloaded at the EPA Environmental Data Registry (EDR) at *http://www.epa.gov/edr/* in the area of the site marked ''Data Standards''. Or for those with password access, at the WISER portion of the State/EPA website at: *http://www.ecos.org/wiser.*

Please send an original and 3 copies of your comments and enclosures (including references) to the W–02–02. Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments must be received or post-marked by midnight June 28, 2002. Hand deliveries should be delivered to: EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC 20460.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epa.gov.* Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–02–02. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Linda Spencer, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566–1651.

SUPPLEMENTARY INFORMATION:

I. Environmental Data Standards Council (EDSC) Background

Data sharing has become an increasingly important aspect of sound environmental management. States, Tribes, and EPA together face the critical challenge of sharing information among themselves and with their respective stakeholders and public. Fundamental to the seamless exchange of data are data standards. Data standards help improve the ability of partners (internal and external) to exchange data efficiently and accurately, and also assist secondary users of data to understand, interpret, and use data appropriately. Recognition of the need for EPA, States and Tribes to develop and agree upon data standards for environmental information sharing has lead to the creation of the EDSC. Data standards are documented agreements on formats and definitions of data elements. Standards are developed only when there is an environmental management business reason.

The EDSC's mission is to promote the efficient sharing of environmental information between EPA, States, Tribes, and other parties through the development of data standards. The EDSC identified reporting water quality results of chemical and microbiological analytes and exchange of tribal identifiers information as information areas for which having standards will create value to all interested parties. An Action Team deliberation process bringing together State, EPA, and Tribal parties began in August 2001 for the Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and June 2000 for the Draft Data Standard for Exchange of Tribal Identifiers Information. Both draft standards were delivered to the EDSC for consideration in March 2002 and approved for initiation of this 45-day public comment period.

After the comment period announced in this Notice, the EDSC and its Action Teams will review comments received and make appropriate modifications. The EDSC will then consider approval of these data standards as appropriate. EDSC approval does not bind an individual agency to using a standard. It will be up to the individual or programs to determine if, when, and how it might use a standard developed under the auspices of the EDSC. It will be the intent of EPA to adopt and implement the consistent use of EDSC-approved standards in its information systems and programs.

II. Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes

Background

The EDSC is proposing to adopt the core set of data elements prepared by the National Water Quality Monitoring Council and adopted in May 2001 by the Advisory Committee on Water Information (ACWI), a Federal advisory committee to the Cooperative Water Program of the Department of Interior's U.S. Geological Survey. The data elements were adopted to facilitate the sharing of chemical and microbiological water quality data and promote efficiency in the monitoring of water resource quality programs. Water quality monitoring is an increasingly important element of water quality management activities. It provides information for an accurate understanding of the conditions of waters and the trends in observed water quality. Water quality must be understood in order that valid and effective restoration and protection programs can be designed for water bodies that vary significantly in their vulnerability and pollution stress. Because of the cost of its collection, water quality data must be viewed as a resource worthy of careful management both to preserve it for future analyses by the agency that collects it and to share it among local, State, and Federal agencies; and the private sector involved in resource management activities.

The Advisory Committee on Water Information's ''core set'' of data elements were intended to allow sharing and interpretation of sample test results among future secondary data users, regardless of data source, database management system, or the data's original intended use. The list ACWI adopted was not intended to suggest that additional data elements would not need to be retained in a data originator's database, or in other databases where it might be considered essential to the use of these data. The proposed standard is intended to adapt the ACWI data elements and serve as the initial basis for data exchange with EPA's Storage and Retrieval database (STORET) and, with approval of the EDSC, EPA has

added data formats and field lengths for this purpose.

Both the EDSC and the ACWI are considering elements to record data of higher levels of biological and habitat data. This data reflects a growing appreciation that water quality in streams, lakes, and estuaries can be described by the life they support. When the list of data elements is complete, the EDSC intends to consider adding these elements to the groups subject to today's notice.

The proposed data standards emphasize metadata that describe common terminology and definitions for documenting key water quality data measurements from water quality monitoring. The EDSC believes that by adopting this core set of data elements, agencies collecting water quality data will be spared the task of creating their own systems for organizing metadata and associated metadata element definitions. When implemented, a standard set of data elements will enable data users to reconcile diverse metadata systems as they draw on multiple data sets to carry out their studies or analyses. The EDSC believes that the use of standard data elements holds the prospect of reducing costly duplicate monitoring efforts. These data elements are proposed as guidelines to define a measure of good practice within the water quality monitoring community. They will encourage greater data consistency, allow the quality of data to be determined by future users, and simplify the process for entering these metadata elements. It is not required that all the proposed data elements be used. Metadata selected must fit the data they describe. Ground water sampling data, for instance, is described by several metadata elements that are unrelated to surface water sampling data. Therefore, the EDSC is not requiring inclusion of all proposed elements in order for data to be entered in a federally maintained database. The EDSC's advocacy of these data elements is not intended to discourage the use of existing water quality data solely because it does not meet these guidelines.

The core set of data elements for reporting water quality results of chemical and microbiological analytes addresses wells, surface water stations, and precipitation measurements. This list is intended to standardize the preservation of data and to facilitate its sharing by standardizing definitions and by defining the list of data, metadata and their descriptive definitions. A data element is the name of a set of information with the same attribute. A data element may be a data field in a database such as a laboratory name, analyte, or the latitude of the sampling station. Examples of metadata elements include such things as sampling/laboratory procedures and quality controls.

The list of data elements is not specific to any particular database, but is intended to be used voluntarily by agencies, organizations and individuals to guide their reporting, storage, and sharing of water quality data. This list is intended primarily to guide the collection of ambient water quality data, but many of the allowable sample location and sample type descriptions are versatile enough to be useful in collecting these data in other settings.

The list of data and metadata elements is divided into categories that describe who collected and analyzed the sample, what was analyzed, why the sample was undertaken, when the sample was collected and analyzed, where the sampling occurred, and how the analysis was done. The list is intended to describe the breadth of information needed to ensure the continuing utility of the information both within an organization and between organizations as information is stored and shared, but without being an exhaustive list of every possible data element that could or should be reported. The EDSC has included the core set of data elements on the essential data needed across programs, recognizing that if more extensive data from a particular monitoring program were collected, it could be made available as well.

III. Draft Data Standard for Exchange of Tribal Identifier Information

The EDSC chartered the Tribal Identifier Action Team to identify and define the major areas of tribal identification information and to develop a data standard that could be used for the exchange of tribal identification data among environmental agencies and other entities. The purpose of the standard is to provide a common vocabulary or lexicon and to encourage tribal entity identification uniformity across information systems, so that information about functionally similar activities and/or instruments can be shared. The Standard is an adoption of The Bureau of Indian Affairs criteria for tribal entity identification (federally recognized tribes). The ''Draft Data Standard for Exchange of Tribal Identifier Information'' is not intended to constrain what information an agency chooses to collect, nor does it constitute a reporting requirement. The Standard defines a uniform way to organize and exchange key information if agencies choose to exchange that information.

The ''Draft Data Standard for Exchange of Tribal Identifier Information'' consists of two data elements—tribal names and tribal codes. Permissible values for tribal names are based on federally recognized tribes from the Bureau of Indian Affairs (BIA) ''Long Names List''. Permissible values for tribal codes are based on those used in BIA's Trust Asset and Accounting Management System (TAAMS), which are used to represent tribal names. Efforts to identify a single authoritative source for state recognized tribes were unsuccessful, and investigations regarding such tribes found that the recognition criteria that states use vary significantly. Therefore the Tribal Action Group chose not to include state recognized tribes as part of this standard at this time.

IV. Future Revisions

EDSC standards will be periodically reviewed and revised as recommended by the EDSC or the stewards of the respective data standards: (1) ACWI for the Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and (2) BIA for Draft Data Standard for Exchange of Tribal Identifier Information. The most current standards will be posted at *www.edsc.org* and *www.epa.gov/edr*.

V. Review of Draft Standards To Date

These draft standards have received significant input through the representatives from EPA program, States, and Tribal organizations serving on the development Action Teams. In addition, the preliminary versions of the draft standards have been reviewed by State and EPA programs managers during the first quarter of 2002. EDSC members have also reviewed and recommended these draft standards for this public comment process.

Dated: April 24, 2002.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 02–11827 Filed 5–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1069]

Ninth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on June 4, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: June 4, 2002; 2 pm–4 pm.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the ninth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the ninth meeting is as follows:

Agenda

Ninth Meeting of the WRC–03 Advisory Committee

Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

June 4, 2002; 2 pm–4 pm.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Eighth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–11981 Filed 5–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1407–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1407–DR), dated April 4, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 2002:

Estill and Wolfe Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11958 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1409–DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1409–DR), dated May 1, 2002, and related determinations.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from a tornado on April 28, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a),

Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Calvert, Charles, and Dorchester Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11953 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1409–DR]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland, (FEMA–1409–DR), dated May 1, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include Public Assistance and Hazard Mitigation in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 1, 2002:

Calvert, Charles, and Dorchester Counties for Public Assistance (already designated for Individual Assistance).

All counties in the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11959 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1413–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–1413-DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Michigan, resulting from flooding on April 15, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster:

Baraga, Gogebic, Houghton, Marquette, and Ontonagon for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11957 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and tornadoes on April 24–28, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Bollinger, Butler, Carter, Howell, and Madison Counties for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11956 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1411–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1411–DR), on May 5, 2002, and related determinations.

EFFECTIVE DATE: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, documenting the President's May 5, 2002, declaration of a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms, tornadoes, and flooding on April 28, 2002 and continuing through May 3, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Louis H. Botta of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Buchanan and Tazewell Counties for Individual Assistance.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11955 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1410–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1410–DR), on May 5, 2002, and related determinations.

EFFECTIVE DATE: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, documenting the President's May 5, 2002, declaration of a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides on May 2, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Justo Hernandez of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

McDowell, Mercer, Mingo and Wyoming Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11954 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Mark W. Whitaker, Wichita, Kansas, and Deanna Kay Melchert, Edmond, Oklahoma; to acquire voting shares of Citizens Financial Corporation, Liberal, Kansas, and thereby indirectly acquire voting shares of Citizens State Bank, Liberal, Kansas.

Board of Governors of the Federal Reserve System, May 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12019 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Franklin Bancorp, Inc., Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Bank, National Association, Southfield, Michigan.

Board of Governors of the Federal Reserve System, May 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12005 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Mariner Bancorp, Baltimore, Maryland; to engage *de novo* through its subsidiary, Finance Maryland, LLC, Baltimore, Maryland, in lending and credit-related insurance activities, pursuant to §§ 225.28(b)(1) and (b)(11)(i) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Community Bancshares, Inc., Overland Park, Kansas; to engage *de novo* in management consulting and financial advisory activities, pursuant to §§ 225.28(b)(6)(iii) and (b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–12018 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, May 20, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 10, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12184 Filed 5–10–01; 3:58 pm]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting

Trustees Meeting

United States Capitol Building, Room HC–6, June 17, 2002, 4:00–4:30 p.m.

1. Call to Order.
2. Approval of the Minutes of the 2001 Annual Meeting.
3. Election of Foundation President.
4. New Business.

Adjournment.

Dated: May 10, 2002.

Louis H. Blair,

Executive Secretary.

[FR Doc. 02–12139 Filed 5–10–02; 12:59 pm]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–05]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement for National Legal Assistance and Elder Rights Projects it will hold a competition for grant awards for three (3) to five (5) projects. The federal share of project costs is expected to range from $150,000 to $250,000 per year for a project period of up to three years.

Purpose of grant awards: The purpose of these projects is to enhance the leadership capacity of state and area agencies on aging to support elder rights activities and to improve the quality and accessibility of the legal assistance provided to older persons.

Eligibility for grant awards and other requirements: Under section 420(c) of the Act as amended in 2000, applicants must be national nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to states, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is June 28, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for Community-Based Services, 330 Independence Ave., SW., Washington, DC 20201, by calling 202/619–2575, or online at *www.aoa.gov/egrants/*. Applications must be mailed or hand-delivered to the Office of Grants Management at the same address, or submitted online at www.aoa.gov/egrants/.

Dated: May 8, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–11937 Filed 5–13–02; 8:45 am]

BILLING CODE 4954–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–06]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under the Statewide Legal Hotlines Program it will hold a competition to fund grant awards for seven to eight (7–8) projects at a federal share of approximately $100,000 to $175,000 per year for a project period of up to three (3) years.

Purpose of grant awards: The purpose of these projects is to establish, or expand or improve, Statewide Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older persons.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to public and/or non-profit agencies, faith-based and community-based organizations experienced in providing legal assistance to older persons.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is August 5, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, 330 Independence Ave., SW., Washington, DC 20201, by calling 202/619–1058 or online at: *www.aoa.gov/egrants.*

Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants.*

Dated: May 8, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–12003 Filed 5–13–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect Meeting: Cancelled

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE) meeting-Cancelled.

Times and Dates: 8:30 a.m.–4:30 p.m., May 16, 2002, 8:30 a.m.–3 p.m., May 17, 2002.

Place: Doubletree Hotel Atlanta Buckhead, 3340 Peachtree Road, NE, Atlanta, Georgia 30326, telephone 404/231–1234, fax 404/231–5236.

Status: Meeting Cancelled. Published in the **Federal Register:** April 18, 2002, Volume 67, Number 75, Page 19190.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: May 8, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11967 Filed 5–13–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0589]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 13, 2002.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control Number 0910–0325)—Extension

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA), (Public Law 103–396), amended the Federal Food, Drug, and Cosmetic Act to permit licensed veterinarians to prescribe extralabel use in animals of approved human and animal drugs. Regulations implementing provisions of AMDUCA are codified under part 530 (21 CFR part 530). A new provision under these regulations in § 530.22(b), permits FDA to establish a safe level for extralabel use in animals of an approved human or animal drug when the agency determines there is reasonable probability that this use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding a safe level is considered an unsafe use of a drug. In conjunction with the establishment of a safe level, the new provision permits FDA to request development of an acceptable residue detection method for an analysis of residues above any safe level established under part 530. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor and perhaps a third party, (e.g., a State agency or a professional association), may negotiate a cooperative arrangement to develop the methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug.

In the **Federal Register** of January 28, 2002 (67 FR 3903), the agency requested comments on the collection of information. In response, FDA received one comment. The comment asked whether the proposed collection of information was necessary for the proper performance of FDA functions including whether the information would have practical utility. As detailed, FDA under this regulation is permitted to request development of an acceptable residue detection method for human or animal drugs used in an extralabel manner that could result in unsafe residues in edible products of the treated animal. If no acceptable analytical method is developed, FDA is permitted to prohibit extralabel use of the drug. Thus, this collection of information is necessary to permit licensed veterinarians to prescribe extralabel use of certain drugs.

The respondents may be sponsors of new animal drug(s), State or Federal

Government, or individuals. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22(b)	2	1	2	4,160	8,320

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The Center for Veterinary Medicine (CVM) has not found circumstances to require the establishment of a safe level and subsequent development of an analytical methodology. However, CVM believes there will be instances when an analytical methodology will be required.

Dated: May 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11934 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0061]

Determination That IFEX (Ifosfamide for Injection), 1-Gram and 3-Gram Vials, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that IFEX (ifosfamide for injection), 1 gram (g) and 3 g, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ifosfamide.

FOR FURTHER INFORMATION CONTACT: Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5670.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA's regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

IFEX is the subject of NDA 19–763, held by Bristol-Myers Squibb Co. (BMS). FDA approved NDA 19–763 on December 30, 1988. Used in combination with other approved antineoplastic agents, IFEX is indicated for third line chemotherapy of germ cell testicular cancer. In the IFEX clinical studies, it was observed that urotoxic side effects, especially hemorrhagic cystitis, were frequently associated with the administration of IFEX. The approved labeling for IFEX stated that IFEX ''should ordinarily be used in combination with a prophylactic agent for hemorrhagic cystitis, such as mesna.'' FDA separately approved BMS's NDA for MESNEX (mesna) Injection on December 30, 1988. BMS never marketed IFEX alone; instead, it elected to market IFEX exclusively in a combination package with MESNEX.

IFEX as a single agent is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. IFEX is also listed as part of a copackaged kit with MESNEX in the Orange Book's prescription drug product list. The relocation of IFEX as a single agent to the ''Discontinued Drug Product List'' coincided with a labeling modification on October 10, 1992, to reflect changes in storage conditions for IFEX and an approval of copackaging with MESNEX.

On January 31, 2001, Tom Stothoff submitted a citizen petition (Docket No. 01P–0061/CP1) to FDA under 21 CFR 10.30, requesting that the agency determine whether IFEX (as a single agent) was withdrawn from sale for reasons of safety or effectiveness. The petitioner seeks this determination in preparation for filing an ANDA for Ifosfamide for Injection, U.S.P.

On March 9, 2001, BMS filed a comment to the citizen petition requesting that FDA find that IFEX has not been withdrawn from sale and is not separately marketed by BMS for reasons of safety or effectiveness. With respect to safety and effectiveness, BMS argued that regardless of whether IFEX was withdrawn, FDA should deny the petitioner permission to file an ANDA for ifosfamide as a single agent because, as stated in the label, ifosfamide can only be administered safely in conjunction with a uroprotective agent such as mesna. BMS cited both the medical literature and the potential for urotoxic reactions if ifosfamide is used alone in support of this claim.

BMS contends that it has never withdrawn or ceased to market IFEX because it has marketed IFEX in a combination package with MESNEX since the time of their approval. However, IFEX was approved under its own NDA as a single agent. In previous instances (see, e.g., 61 FR 25497, May 21, 1996) (addressing a relisting request for glyburide tablets), FDA has concluded that never marketing an approved product is equivalent to withdrawing the drug from sale.

Therefore, even though BMS has never marketed IFEX alone, it is appropriate to categorize IFEX (as a single agent) as having been withdrawn from sale. Once a listed drug has been withdrawn from sale, FDA must make a determination that the withdrawal from sale was not for reasons of safety or effectiveness before it can approve any ANDAs referencing the listed drug.

The agency has determined that IFEX as a single agent has not been withdrawn for reasons of safety or effectiveness. FDA agrees with BMS that ifosfamide should be used with a uroprotective agent like mesna. However, that does not preclude the safe use of ifosfamide as a single agent with MESNEX or a generic version of mesna. FDA approved two ANDAs for mesna in April 2001. The FDA has no requirement that coadministered products must also be copackaged. There are many drugs whose labeling identifies them for use in combination with other drugs with which they are not copackaged, including Taxol and Taxotere. Neither the petitioner nor BMS identified any data suggesting that marketing IFEX alone would compromise patients' safety. Moreover, the relevant literature and adverse event reports do not bear out BMS's claim that marketing IFEX as a single agent would be unsafe. In the absence of data suggesting a safety risk, and because IFEX was approved as a single agent, we conclude that FDA may approve ANDAs referencing IFEX alone.

After considering the citizen petition and the comments thereon and reviewing its records, FDA determines that, for the reasons outlined previously in this document, IFEX as a single agent was not withdrawn for reasons of safety or effectiveness. Accordingly, the agency will continue to list IFEX in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to IFEX, 1-g and 3-g vials, may be approved by the agency.

Dated: May 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11971 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0113]

Medical Devices; Draft Guidance for Industry and FDA on Class II Special Controls: Root-Form Endosseous Dental Implants and Abutments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA.'' This draft guidance document was developed as a special control guidance to support the reclassification of the root-form endosseous dental implant device from class III to class II and the reclassification of the endosseous dental implant abutment device from class III to class II. Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule to reclassify these device types. This guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on the draft guidance by August 12, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments. See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document describes a means by which the root-form endosseous dental implant device and the endosseous dental implant abutment device may comply with the requirement of special controls for class II devices. A root-form endosseous dental implant device is intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. An endosseous dental implant abutment device is a separate component that is attached to the implant and is intended to aid in prosthetic rehabilitation.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on root-form endosseous dental implant and endosseous dental implant abutment devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

In order to receive the draft guidance entitled ''Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1389) followed by the pound sign (ι). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers'

assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. Guidance documents are also available at *http://www.fda.gov/ohrms/dockets/default.htm*.

IV. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments on the draft guidance by August 12, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–12042 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of the NCI State of the Science Web Site

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 12, 2001 pages 31678 and 31679, Volume 66, No. 113 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days fro public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Web-Survey of the State of the Science Web Site.

Type of Information Collection Request: New.

Need and Use of Information Collection: The NCI seeks to evaluate its State-of-the-Science (SOTS) meetings project that offers audio-visual presentations of SOTS meetings via the Internet. The SOTS disseminates, with expediency and immediacy, the most recent oncology research results to a potentially vast audience of researchers. The proposed data collection will pro6vide feedback to NCI on the value of the Web site to those who NCI deem as the Web site's target population (*i.e.,* clinical oncology researchers unable to attend SOTs meetings in person because of cost or time limitations). The first tier of respondents will consist of researchers who have attended any one of the three most recent State of the Science meetings. The tier-one survey participants will be asked to provide the names, emails, and any other contact information for five colleagues who are clinical research oncologists. The oncologists will be asked only once to provide the names and contact information for colleagues. The second tier of respondents will consist of the clinical oncology researchers nominated by the first tier respondents. It is the second tier respondents who will be asked to go to the Web site and complete the Web survey. They are asked to do this only once. Other tier two respondents will be oncology fellows whose current and full contact information is available in a national register of oncology fellows, Reports generated by the study will allow NCI to determine the success of the SOTS Web site (in terms of clarity of content, ease of navigation, and usefulness and information), and indirectly, the potential wider use and applications of Internet-based programs to improve the overall cancer clinical trails systems at NCI.

Frequency of Response: One time.

Affected Public: Individuals, researchers.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Tier One Clinical Oncology Researchers	220	1	0.0835	18.37
Tier Two Clinical Oncology Researchers	400	1	0.75	300
Total				318.37

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to responded, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk

Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Bryce Reeve, Ph.D., National Cancer Institute, Executive Plaza North, Room 4026, 6130 Executive Boulevard, Rockville, MD 20852, non-toll free telephone (301) 594–6574, or email: *reeveb@mail.nin.gov,* or *br117c@nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 7, 2002.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 02–11964 Filed 5–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance. The Ordinance regulates the control, possession and sale of liquor on the Augustine Band of Cahuilla Mission Indians trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on April 18, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance, Resolution No. 01.03–A, was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001. The Augustine Band of Cahuillla Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Augustine Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 01.03–A, the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance, Resolution No. 01.03–A, reads as follows:

Title VIII—The Licensing and Regulation of Liquor

Chapter I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession, and sale of liquor on the lands of the Augustine Band of Cahuilla Mission Indians of the Augustine Indian Reservation is a matter of special concern to the tribal government of the Augustine Band.

Section 2. Federal law (18 U.S.C. §§ 1154, 1161) currently prohibits the introduction of liquor into Indian Country except as provided therein and in accordance with State law as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), and expressly delegates to each tribe the decision regarding when and to what extent the introduction, possession and sale of liquor shall be permitted.

Section 3. It is in the best interest of the Band to enact a tribal code governing the introduction, possession and sale of liquor on the Augustine Indian Reservation, and which also provides for exclusive purchase, distribution, and sale of liquor on tribal lands within the exterior boundaries of the Reservation. Further, the Band has determined that said purchase, distribution and sale shall take place only at tribally-owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Band as a whole.

Section 4. The Tribal Council further finds that violations of this Title would damage the Band in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Title the Band will impose a tax on the sale of liquor on the reservation. Based upon the foregoing findings and determinations, the Tribal Council hereby ordains as follows.

Chapter II—Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 1. *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. *Alcoholic Beverage.* Identical in meaning to the term liquor as defined in Chapter II, subsection 6 of this Ordinance.

Section 3. *Bar.* Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4 percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 4 percent of alcohol by weight shall be referred to as ''strong beer.''

Section 5. *Tribal Council.* The governing body of the Augustine Band of Cahuilla Mission Indians.

Section 6. *Liquor.* The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all

preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than 1 percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 7. *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 8. *Malt Liquor.* All beer, strong beer, ale, stout, and porter.

Section 9. *Package.* Any container or receptacle used for holding liquor.

Section 10. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 11. *Sale and Sell.* Any exchange, barter, and traffic; including the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

Section 12. *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 13. *Tribal Land.* All land within the exterior boundaries of the Augustine Indian Reservation that is held in trust by the United States for the Augustine Band of Cahuilla Mission Indians and for individual allottees.

Section 14. *Tribal Gaming Commission.* The gaming regulatory body established under the Gaming Code that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 15. *Wine.* Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, applies, etc.), or fruit juice and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Chapter III—Powers of Enforcement

Section 1. In addition to the powers and duties provided for in other Augustine Codes, the Tribal Council, in furtherance of this Title, shall have the powers and duties to:

(a) Publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, and distribution of alcoholic beverages in public places on the Augustine Indian Reservation;

(b) Employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale, manufacture and/or distribution of liquor in public places on the Augustine Indian Reservation;

(d) Hold hearings on violations of this Title or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Title as necessary;

(f) Determine and seek damages for violation of this Title;

(g) Make such reports as may be required by the Tribal Council;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and keep accurate records, books and accounts; and

(i) Exercise such other powers as may be delegated from time to time by the Tribal Council.

Section 2. *Limitation on Powers.* In the exercise of its powers and duties under this Title, the Tribal Council and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the sovereign immunity of the Augustine Band of Cahuilla Mission Indians from suit without a majority vote of the Tribal Council.

Section 3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Chapter IV—Sale of Liquor

Section 1. *Licenses Required.* No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Augustine Indian Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the reservation.

Section 2. *Sales for Cash.* All liquor sales within the reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks or debit cards or credit cards issued by any financial institution.

Section 3. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one. Resale of any alcoholic beverage purchased within the exterior boundaries of the reservation is prohibited. Any person who is not licensed pursuant to this Title who purchases an alcoholic beverage within the boundaries of the reservation and resells it, whether in the original container or not, shall be guilty of a violation of this Title and shall be subjected to exclusion from tribal lands or liability for money damages of up to $500, as determined by the Tribal Council after notice and an opportunity to be heard.

Chapter V—Licensing

Section 1. *Procedure.* In order to control the proliferation of establishments on the reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Augustine Indian Reservation must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the reservation for which no money is requested or paid.

Section 2. *State Licensing.* No person shall be allowed or permitted to sell or provide liquor on the Augustine Indian Reservation if he/she does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

Section 3. *Application.* Any person applying for a license to sell or provide liquor on the Augustine Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Council and pay such application fee as may be set from time-to-time by the Tribal Council for this purpose. An incomplete application will not be considered.

Section 4. *Issuance of License.* The Tribal Council may issue a license if it believes that the issuance of such a license would be in the best interest of the Augustine Band, the residents of the Augustine Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision

to issue any license rests in the sole discretion of the Tribal Council.

Section 5. *Period of License.* Each license may be issued for a period of not to exceed 2 years from the date of issuance.

Section 6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Title and has maintained its licensure with the State of California; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the citizens of the Augustine Band.

Section 7. *Revocation of License.* The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 8. *Transferability of Licenses.* Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Chapter VI—Taxes

Section 1. *Sales Tax.* There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the reservation in the amount of 1 percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the reservation and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. *Payment of Taxes to the Tribe.* All taxes from the sale of alcoholic beverages on the Augustine Indian Reservation shall be paid over to the General Treasury of the Augustine Band and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Council and administration of this Title.

Section 3. *Taxes Due.* All taxes upon the sale of alcoholic beverages on the reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 18 percent per annum.

Section 4. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the reservation. Said review or audit may be done periodically by the Tribal Council through its agents or employees whenever in the discretion of the Tribal Council such a review or audit is necessary to verify the accuracy of reports.

Chapter VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Title, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Title subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Title shall apply to the possession or transportation of any quantity of liquor by citizens of the Augustine Band for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Augustine Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Augustine Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Title.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Title.

Section 5. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Title for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Title for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Title shall be liable to pay the Augustine Band up to five hundred dollars ($500) per violation as civil damages to defray the tribe's cost of enforcement of this Title. The amount of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of 27, the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(2) United States Active Duty Military;

(3) Passport; and

(4) Gaming license or work permit issued by the Tribal Council, if said license or permit contains the bearer's correct age, signature and photograph.

Chapter VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Chairperson of the Tribal Council or, if he/she fails or refuses to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Band to abate and perpetually enjoin any nuisance declared under this Title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than twenty five thousand dollars ($25,000), payable to the Band and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provision of this title of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this title or other tribal liquor laws. If any conditions of

the bond are violated, the whole amount may be recovered for the use of the Band.

Section 3. In all cases where any person has been found responsible for a violation of this Title relating to manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Title shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Chapter IX—Profits

Section 1. The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on the Augustine Indian Reservation, and from proceedings involving violations of this Title, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Title; and

(b) Second, the remainder shall be turned over to the General Fund of the Augustine Band and expended by the Tribal Council for governmental services and programs on the Augustine Indian Reservation.

Chapter X—Severability and Effective Date

Section 1. If any provision or application of this Title is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Augustine Band that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. § 1154, but only to the extent required by the laws of the United States.

Chapter XI—Amendment

This Ordinance may only be amended by a majority vote of members of the Tribal Council of the Augustine Band attending a duly-noticed meeting at which a quorum is present.

Chapter XII—Certification

This Title was passed and amended at duly held and convened meetings of the Tribal Council on March 13, 2001 and April 18, 2001, as attested to and certified by MaryAnn Martin, Chairperson of the Tribal Council of the Augustine Band.

[FR Doc. 02–12012 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Santa Rosa Rancheria Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Santa Rosa Rancheria Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Santa Rosa Rancheria trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on July 13, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001–32, was duly adopted by the Tribal Council of the Santa Rosa Rancheria on July 13, 2001. The Santa Rosa Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Santa Rosa Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 2001–32, the Santa Rosa Rancheria Liquor Control Ordinance was duly adopted by the Santa Rosa Tribal Council on July 13, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001–32, reads as follows:

The Santa Rosa Rancheria Liquor Control Ordinance

Article I—Declaration of Public Policy and Purpose

Section 1.1. The distribution, possession, consumption and sale of liquor on the lands of the Santa Rosa (Tachi) Rancheria is a matter of special concern to the Santa Rosa Indian Community.

Section 1.2. Federal law, as codified at 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State Law and the duly enacted law of the Tribe. By adoption of this Ordinance, it is the intention of the Tribal Council to establish tribal law regulating the sale, distribution and consumption of liquor and to ensure that such activity conforms with all applicable provisions of the laws of the State of California.

Section 1.3. The General Council, as the governing body of the Tribe pursuant to the Constitution, has the authority (i) pursuant to Article VI, Section I.F of the Constitution to administer Community assets and to manage all economic affairs and enterprises of the Community; and (ii) pursuant to Article VI, Section 1.K, to delegate any of its authorities or responsibilities to the Tribal Council; furthermore, the General Council has the inherent right to enact ordinances to safeguard and provide for the health, safety and welfare of the Santa Rosa Rancheria and the Santa Rosa Indian Community. Accordingly, the General Council has determined that it is in the best interest of the Tribe to enact a tribal ordinance governing the distribution, possession, consumption and sale of liquor within the exterior boundaries of the Santa Rosa Rancheria. By General Council Resolution No. 2000–31, the General Council has (i) approved the sale and distribution of liquor on the Santa Rosa Rancheria; and (ii) delegated

to the Tribal Council the authority to enact an ordinance providing for Tribal regulation of such sale and distribution of liquor.

Section 1.4. Through its delegated authority, the Tribal Council has determined that the purchase, distribution and sale of Liquor shall take place only at duly licensed (i) tribally owned enterprises; (ii) tribally-licensed establishments; and (iii) tribally-sanctioned Special Events, all as operating on Tribal Lands.

Section 1.5. The Tribal Council has determined that any sale or other commercial distribution of Liquor on the Santa Rosa Rancheria, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Tribe and is therefore prohibited.

Section 1.6. Based upon the foregoing findings and determinations, the Tribal Council hereby enacts this Santa Rosa Rancheria Liquor Control Ordinance (this Ordinance) as follows.

Article II—Definitions

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1. *Alcohol.*

That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2. *Alcoholic Beverage.* Identical in meaning to the term liquor as defined herein.

Section 2.3. *Bar.* Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 2.4. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

Section 2.5. *Gaming Compact.* The federally approved Tribal-State Compact, dated September 10, 1999, between the State of California and the Tribe.

Section 2.6. *Liquor.* The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1 %) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.7. *Liquor Store.* Any store at which liquor is sold and, for the purposes of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.8. *Licensed Wholesaler.* A wholesale seller of liquor that is duly licensed by the Tribe and the State.

Section 2.9. *Malt Liquor.* Beer, strong beer, ale, stout and porter.

Section 2.10. *Package.* Any container or receptacle used for holding liquor.

Section 2.11. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 2.12. *Sale and Sell.* Any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

Section 2.13. *Special Event.* Any social, charitable or for-profit discreet activity or event conducted by the Tribal Councilor and any tribal enterprise on tribal lands at which liquor is sold or proposed to be sold.

Section 2.14. *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.15. *State law.* The duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the compact.

Section 2.16. *Tribal Council.* The Business Committee of the Tribe as elected by the General Council in accordance with the Articles of Community Organization of the Santa Rosa Indian Community, Santa Rosa Rancheria (the Constitution).

Section 2.17. *Tribe.* The Santa Rosa Indian Community Santa Rosa (Tachi) Rancheria, located in Kings County, California.

Section 2.18. *Tribal Enterprise.* Any business entity, operation or enterprise owned, in whole or in part, by the Tribe.

Section 2.19. *Tribal Land.* All land within the exterior boundaries of the Santa Rosa Rancheria that is held in trust by the United States for the benefit of the Tribe.

Section 2.20. *Wine.* Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III—Enforcement

Section 3.1. *Tribal Council Powers.* The Tribal Council, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the purchase, sale, consumption and distribution of alcoholic beverages in public places on the Santa Rosa Rancheria as the Tribal Council deems necessary.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to exercise its authority as set forth in this Ordinance.

(c) Issues licenses permitting the sale and/or distribution of liquor on the Santa Rosa Rancheria.

(d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Publish notices and make such reports to the General Council as may be appropriate;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts;

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

(k) Exercise such other powers as may be delegated from time to time by the General Council.

Section 3.2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members, employees and agents shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Tribe from suit except by express resolution of the Tribal Council, such waiver being subject to the following limitations: The waiver must be transaction specific, limited as to duration and beneficiary, include a provision that limits recourse only to specified assets or revenues of the Tribe or a Tribal entity, and specifies the process and venue for dispute resolution, including applicable law.

Section 3.3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designees at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

Article IV—Liquor Sales

Section 4.1. *License Required.* No distribution or sales of Liquor shall be made on or within public places within the exterior boundaries of the Santa Rosa Rancheria, except at a duly licensed and authorized special event, tribal enterprise, bar, liquor store located on tribal lands.

Section 4.2. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

Section 4.3. *Sale for Personal Consumption.* Except for sales by licensed wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to five hundred dollars ($500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Section 4.4. *Compliance Required.* All distribution, sale and consumption of liquor on tribal lands shall be in compliance with this Ordinance including all applicable provisions of State Law.

Article V—Licensing

Section 5.1. *Licensing Procedures.* In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor, whether wholesale or retail, within the exterior boundaries of the Santa Rosa Rancheria must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

Section 5.2. *State Licensing.* In the event dual Tribal and State licenses are required by State Law, no person shall be allowed or permitted to sell or provide liquor on the Santa Rosa Rancheria unless such person is also licensed by the State of California, as required, to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable Tribal license shall automatically be revoked or suspended.

Section 5.3. *Application.* Any person applying for a license to sell or provide liquor on the Santa Rosa Rancheria shall complete and submit an application provided for this purpose by the Tribal Council and pay such application fee as may be set from time-to-time by the Tribal Council for this purpose. An incomplete application will not be considered. The Tribal Council shall establish licensing procedures and application forms for wholesalers, retailers and special events.

Section 5.4. *Issuance of License.* The Tribal Council may issue a license if it believes that such issuance is in the best interest of the Tribe, the residents of the Santa Rosa Rancheria and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Council.

Section 5.5. *Period of License.* Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Tribe and the other residents of the Santa Rosa Rancheria.

Section 5.7. *Revocation of License.* The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and, to demonstrate why the license should not be suspended or revoked.

Section 5.8. *Transferability of Licenses.* Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI—Taxes

Section 6.1. *Sales Tax.* The Tribal Council shall have the authority to impose a sales tax on all wholesale and retail liquor sales that take place on Tribal Lands. Such tax may be implemented by duly enacted resolution of the Tribal Council, as supplemented by regulations adopted pursuant to this Ordinance. Any tax imposed by authority of this Section shall apply to all retail and wholesale sales of liquor on Tribal Lands, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2. *Payment of Taxes to the Tribe.* All taxes imposed pursuant to this Article VI shall be paid over to the General Treasury of the Tribe and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

Article VII—Rules, Regulations and Enforcement

Section 7.1. *Evidence.* In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Ordinance.

Section 7.2. *Civil Violations.* Any person who shall sell or offer for sale or distribute or transport in any manner

any liquor in violation of this Ordinance, or who shall have liquor in his/her possession for distribution or resale without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe or other persons located on Tribal lands for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Santa Rosa Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. *Illegal Purchases.* Any person within the boundaries of the Santa Rosa Rancheria who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 7.4. *Sale to Intoxicated Person.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5. *Providing Liquor to Underage Person.* No person under the age of twenty-one (21) years shall serve, consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 7.6. *Selling Liquor to Underage Person.* Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of .a violation of this Ordinance for each such sale or drink provided.

Section 7.7. *Civil Penalty.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe the amount of two hundred fifty dollars ($250) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The payment of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice, hearing and an opportunity to respond to such allegations.

Section 7.8. *Identification Requirement.* Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;

(2) United States Uniformed Services identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 8.1. *Public Nuisance Established.* Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2. *Abatement of Nuisance.* The Tribal Chairperson, upon authorization by a majority of the Tribal Council or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars ($5,000) payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other Tribal liquor laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Tribe.

Section 8.3. *Evidence.* In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

Article IX—Use of Proceeds

Section 9.1. *Application of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on Tribal Lands and from fines imposed as a result of violations of this Ordinance, shall be applied as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the Tribal Council for governmental services and programs on tribal lands.

Article X—Miscellaneous Provisions

Section 10.1. *Severability and Savings Clause.* If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 10.2. *Effective Date.* This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. *Repeal of Prior Acts.* Any and all-prior resolutions, laws, regulations or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

Section 10.4. *Conformance with State Law.* All acts and transactions under this Ordinance shall be in conformity with the Compact and the laws of the State of California as that term is used in 18 U.S.C. Sec. 1154, but only to the extent required by the laws of the United States.

Article XI—Amendments

This Ordinance may be amended only pursuant to a duly enacted Resolution of the Tribal Council, with certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

[FR Doc. 02–12011 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Ysleta del Sur Pueblo trust lands, to be conformity with the laws of the State of Texas, where applicable and necessary. Although the Ordinance was adopted on March 19, 2002, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Ysleta del Sur Pueblo Liquor Ordinance No. 004–02, as authorized by Resolution No. TC–33–02, was duly adopted by the Ysleta del Sur Pueblo Tribal Council on March 19, 2002. The Ysleta del Sur Pueblo, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Ysleta del Sur Pueblo.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. TC–33–02, the Ysleta de Sur Pueblo of the Tigua Tribe Liquor Ordinance No. 004–02, was duly adopted by the Ysleta del Sur Pueblo Tribal Council on March 19, 2002.

Dated: May 3, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

The Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinace No. 004–02 reads as follows:

Tribal Ordinance No. 004–02; Adopting Article 64 of the Tigua Tribe's Code of Laws Entitled: Sale of Alcoholic Beverages

Pursuant to the authority vested in the Tribal Council as the duly constituted traditional governing body of the Ysleta del Sur Pueblo, a federally recognized Indian tribe exercising all inherent governmental powers, fiscal authority and tribal sovereignty as recognized in the Ysleta del Sur Pueblo Restoration Act (Public Law 100–89 as codified in 25 U.S.C. 1300g) and its lawful authority to provide for health, safety, morals, welfare, tribal economic development and self-sufficiency of the Ysleta del Sur Pueblo, the Tribal Council hereby enacts this Ordinance for the purpose of regulating the sale of alcoholic beverages. Therefore, be it resolved and ordained by the Tribal Council of the Ysleta del Sur Pueblo:

That the following Article entitled Sale of Alcoholic Beverages, which by reference, is incorporated herein as if set forth at length, is hereby adopted as Article 64 of the Tigua Tribe's Code of Laws.

Article 64: Sale of Alcoholic Beverages

Section 1—Conformity with State Law. The Pueblo, acting through the Tribal Council, may sell alcohol and alcoholic beverages on the Pueblo's reservation for on premises consumption only. Except as otherwise provided herein, the sale and consumption of alcoholic beverages on the Pueblo's reservation and its lands shall be in conformance with the laws of the State of Texas. Nothing contained herein shall be construed as a grant of jurisdiction to the State of Texas or a waiver of any of the Pueblo's sovereignty or immunity from suit.

Section 2—Fees. Any and all fees, charges, or income resulting from the sale of alcoholic beverages shall be due and payable to the Ysleta del Sur Pueblo rather than the State of Texas.

Section 3—Enforcement. The Pueblo shall be solely responsible for the enforcement and administration of this Ordinance. The Tigua Tobacco and Alcohol Commission shall issue and enforce such regulations as are reasonably necessary to carry out the purposes of this Article.

Section 4—Tigua Alcohol and Tobacco Commission.

4.01. There is hereby created the Tigua Tobacco and Alcohol Commission comprised of a Commissioner and two (2) members. The Commissioner and the members of the Commission shall be tribal members. No person shall be appointed to the Tigua Tobacco and Alcohol Commission unless the Tribal Council is satisfied that he or she has no ownership interest in any company or enterprise which contracts with the Pueblo for the sale of alcohol or tobacco, or any activity which may have interests in conflict with the Pueblo's sale of alcohol or tobacco.

4.02. The Commissioner and the members of the Commission shall serve at the pleasure of the Tribal Council and may be removed at any time by majority vote of the Tribal Council.

4.03. The Commissioner and members, and any employees of the Commission, shall be reasonably compensated, as determined by the Tribal Council.

Section 5—Prohibition. No individual, entity, or organization shall be permitted to sell or dispense alcoholic beverages from or on the Pueblo's reservation or its lands other than the Pueblo acting by and through the Tribal Council.

[FR Doc. 02–12013 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[WO–310–1310–02–PB–24 1A]

Extension of Approved Information Collection; OMB Approval No. 1004–0162

AGENCY: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from entities who conduct geophysical operations on public lands.

DATES: You must submit your comments to BLM at he address below on or before July 15, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–

630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include (ATTN: 1004–0162) and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, at (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a), requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of Federal mineral estate. The MLA authorizes the Forest Service (FS) to permit oil and gas companies, lessees, exploration companies, and independent exploration operators to conduct geophysical exploration on or off leases on National Forest System (NFS) lands. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary of the Interior to lease lands acquired by the United States (30 U.S.C. 341–359); and the Federal Onshore Oil and Gas Leasing Reform Act of December 22, 1987, authorizes the Secretary of the Interior to lease NFS lands with FS consent. On NFS lands, the Secretary of Agriculture is authorized to regulate all surface-disturbing activities which take place on a lease.

43 CFR Group, 3150 establishes procedures for BLM to issue authorizations to conduct oil and gas geophysical exploration operations on public lands. 36 CFR part 228 subpart E, and 36 CFR part 251 subpart A and subpart B establish procedures for the FS to authorize geophysical operations on FS lands.

The BLM and FS need the information requested on the Notice of Intent to process applications for geophysical exploration operations on public lands and to manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. The BLM and FS use the information to determine if operators will conduct geophysical operations in a manner consistent with the regulations, local land use plans, and stipulations. The BLM and FS need the information requested on the Notice of Completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary. You may submit the forms in person or by mail. We need the company name, address, and telephone number to identify the person/entity conducting operations. BLM will assign a Case File Number to track each specific operation. We require the legal land description to determine the location of the involved public lands. Additional information that we request includes the type and size of the proposed activity, location of the proposed operation, equipment you plan to use, operating procedures, and timing of the operation.

Applicants must submit these forms to allow BLM and FS to determine who is conducting geophysical operations on public lands. An interagency BLM/FS team revised the respective forms to streamline and improve the process for both the Federal Government and its customers. Combining the BLM and FS individual forms into a single BLM/FS form will ensure consistent management of the geophysical operations on public lands and will better serve the public.

Old forms	New forms
(1) Terms and Conditions for Notice of Intent to Conduct Geophysical Exploration, BLM Standard Form 3150–4a.	(1) Notice of intent and Request for Authorization to Conduct Geophysical Exploration Operations (NOI/RFA), BLM Standard Form 3110–4/FS Standard Form 2800–16.
(2) Application for Prospecting Permit, FS Standard Form 2800–14	
(3) Geophysical Prospecting Permit, FS Standard Form 2800–15	
(4) Notice of Completion of Oil and Gas Exploration Operations, BLM Standard Form 3150–5.	(2) Notice of Completion of Geophysical Exploration Operations, BLM Standard Form 3110–5/FS Standard Form 2800–16a.

Based on past and recent experience administering onshore oil and gas geophysical exploration operations, BLM estimates the public reporting burden for completing the Notice of Intent is one hour, and for completing the Notice of Completion is 20 minutes. The information we require is clearly outlined on the forms and in the terms and conditions. The information is already maintained by the respondents for their own record keeping purposes and they will need only to transfer or attach it to the forms. BLM estimates that it receives approximately 600 Notices of Intent and 600 Notices of Completion annually, with a total annual burden of 800 hours. Respondents vary from small businesses to major corporations.

The FS estimates the reporting burden is approximately one hour to complete a Notice of Intent which includes the time to gather the information on the project and complete the form. The FS estimates that it receives approximately 25 Notices of Intent and 25 Notices of Completion annually, with a total annual burden of 31 hours. Respondents include individual lessees, small and large companies, and independent exploration operators. After combining the annual burden of the BLM and FS, the total estimated annual burden is 831 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 3110–4/FS Form 2800–16 or BLM Form 3110–5/FS Form 2800–16a by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All

comments will become a matter of public record.

Dated: April 9, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

Dated: April 18, 2002.

Larry O. Gadt,

Director, Minerals and Geology Management, USDA, Forest Service.

[FR Doc. 02–12014 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–0293–02–1310–PB]

National Petroleum Reserve—Alaska Research and Monitoring Advisory Team Public Meeting

AGENCY: Bureau of Land Management (BLM), Northern Field Office, Interior.

ACTION: Notice of the meeting location and time for the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team.

SUMMARY: The National Petroleum Reserve—Alaska Research and Monitoring Advisory Team (NPR–A RMT) will meet May 29, 2002, from 9 a.m. to 4 p.m. to discuss research and monitoring needs in the NPR–A and to recommend priority projects for funding by BLM. The meeting, which is open to the public, will be held at the BLM Northern Field Office, located at 1150 University Avenue in Fairbanks, Alaska. Public comments will be taken from 1 p.m. to 1:30 p.m.

ADDRESSES: Inquiries or comments should be sent to Public Affairs, BLM Northern Field Office, 1150 University Avenue, Fairbanks, AK 99709–3844.

FOR FURTHER INFORMATION CONTACT: Herb Brownell, (907) 474–2333 or 1–800–437–7021, x2333, or e-mail *Herb_Brownell@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The RMT's members represent BLM, the Minerals Management Service, U.S. Department of Energy, U.S. Fish and Wildlife Service, U.S. Geological Survey—Biological Resources Division, the North Slope Borough, the oil and gas industry, environmental/resource conservation organizations, natural resource managers and academics, and the public at large. The RMT advises BLM in assessing the effectiveness and appropriateness of mitigative stipulations established in the 1998 Record of Decision for the Northeast NPR–A Integrated Activity Plan/Environmental Impact Statement. More generally, the RMT assesses NPR–A research and monitoring needs, develops and recommends research priorities, and works toward applying improved technology and operating practices to oil exploration and possible development in NPR–A.

The RMT meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972.

Dated: April 4, 2002.

Robert W. Schneider,

Field Manager.

[FR Doc. 02–12016 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. MT–924–02–1430–FM–003E]

Notice of Intent to Amend the West HiLine Resource Management Plan; Chouteau County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is proposing to amend the West HiLine Resource Management Plan. The BLM proposes exchanging 2.04 acres of Federal surface estate in Chouteau County for private land within the Crow Indian Reservation in Big Horn and Yellowstone Counties as a part of Phase 4a of the Crow Boundary Settlement Act Land Exchange. The Federal land is legally described as:

Chouteau County

T28N, R9E, PMM.

Sec. 18: Lot 1, containing 2.04 acres, more or less

Disposal of the Federal land described above was not analyzed in the West HiLine Resource Management Plan (RMP) and associated Environmental Impact Statement. Disposal of the Federal land requires: (1) That the specific tracts be identified in the land use plan together with the criteria to be met for exchange ,and (2) a discussion of how the exchange criteria have been satisfied. The discussion of how these requirements are being met will be part of the Environmental Assessment prepared to analyze the effects of disposal, as well as the plan amendment itself.

DATES: Comments and recommendations on this notice to amend the West HiLine RMP should be received on or before June 13, 2002.

ADDRESSES: Comments should be sent to David L. Mari, Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Loretta Park, Realty Specialist, 406/538–1910.

Dated: February 20, 2002.

M. James Feist,

Acting Field Manager.

[FR Doc. 02–12017 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 152450]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw approximately 521.83 acres of public land from surface entry and mining, and 208.03 acres of Federal reserved mineral interests underlying private surface estate from mining to protect important scenic, open space, and recreational resource values of the Beck Lake area in Park County. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by August 12, 2002.

ADDRESSES: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Mike Blymyer, BLM Cody Field Office Manager, 1002 Blackburn, P.O. Box 518, Cody, Wyoming 82414, 307–578–5900, or Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: On August 27, 2001, a petition/application was approved allowing the BLM to file an application to withdraw the following described public land and Federal reserved mineral interests from settlement, sale, location, or entry under the general land laws, including the mining laws, except for disposal under the Recreation and Public Purposes Act of 1926, as amended, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 101 W.,

Sec. 6, lots 2 through 4, inclusive;

Sec. 7, lots 2 and 3, W½NE¼, SE¼NE¼, and E½NW¼.

T. 52 N., R. 102 W.,
Sec. 1, SE¼SE¼,S½NE¼SE¼;
Sec. 12, E½NE¼.

The area described contains approximately 521.83 acres of public surface and Federal minerals in Park County.

T. 52 N., R. 101 W.,
Sec. 6, lot 1.
T. 52 N., R. 102 W.,
Sec. 1, lots 3, 4, 5, 7, N½NE¼SE¼;
Sec. 12, lot 1.

The area described contains approximately 208.03 acres of Federal reserved minerals underlying private surface in Park County.

The purpose of the proposed withdrawal is to protect important scenic, open space, and recreational resource values pending further study and development of appropriate, and possibly longer-term, actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: September 14, 2001.

Alan L. Kesterke,

Associate State Director.

Editorial Note: This document was received at the Office of the Federal Register on May 9, 2002.

[FR Doc. 02–12015 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Days Hotel and Conference Center in Herndon, Virginia.

DATES: Tuesday, May 21, 2002, from 8:30 a.m. to 5 p.m. and Wednesday, May 22, 2002, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia 20170, telephone (703) 471–6700.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov.*

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, environmental interests, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for May 21st will cover the following principal subjects:

Department's Strategic Plan. This presentation will provide an overview of the Department's new strategic plan, and provide insight into the process MMS is undertaking to develop a strategic plan that aligns with the Department's strategic direction.

Education and Outreach Subcommittee Report. This presentation will provide an update on the Subcommittee's charge and activities since inception in October 2001.

Ocean Commission. This presentation will provide an update on activities of the U.S. Commission on Ocean Policy since the October 2001 meeting.

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will also highlight the activities that are related to mercury, energy issues/concerns, ocean issues, hard mineral activities, and any other topics that are relevant to both Committees.

Hard Minerals Subcommittee Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

Biological Monitoring Program on Beach Nourishment Operations. This presentation will address the $8 million multi-year monitoring study recently completed by the U.S. Army Corps of Engineers.

Geographical Information System. This presentation will address how the State of Alabama uses the geographical information system for sand and gravel resources and oil and gas resources.

Futuristic Energy Production Schemes in the OCS. This presentation will address the possible use of OCS facilities for hydrogen production and alternative energy schemes.

Congressional/Legislative Update. This presentation will provide an update on current congressional issues related to the OCS program.

Moving Toward a National Ocean Observing System: Results of the Integrated Sustained Ocean Observing System (ISOOS) Workshop. This presentation will address the potential for establishing a National Ocean Observing System. Results of the March 2002, ISOOS Workshop, hosted by Ocean.US of the National Oceanographic Partnership Program, will be presented and discussed.

Recent Bankruptcies and the Potential Impact on MMS. This presentation will address how recent events could potentially impact OCS activities.

The agenda for May 22nd will cover the following principal subjects: Change in the Natural Gas Drilling Outlook. This presentation will address natural gas supply/demand.

Floating Production Storage and Offloading Systems Record of Decision—Next Steps. This presentation will address the record of decision, the environmental impact statement, industry approaches, and the Coast Guard's regulatory approach.

Eastern Gulf of Mexico Sales. This presentation will address Lease Sales 181 and 189.

State Issues. This presentation will address several different issues affecting states, which may include concerns regarding drilling and tourism, beach nourishment, and pipelines.

Mercury in Drilling Muds. This presentation will address the studies regarding environmental research related to mercury in drilling muds, industry drilling operations and the regulatory framework for permitting these discharges on the OCS.

MMS Regional Updates. The Regional Directors will highlight activities off the

California and Alaska coasts and in the Gulf of Mexico.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 13, 2002, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at MMS in Herndon.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: May 9, 2002.

Michael Hunt,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 02–12035 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 13, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by May 29, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Alaska

Anchorage Borough—Census Area
- Mt. Alyeska Roundhouse, Approx. 2 mil W of Alyeska, Girdwood, 02000562

Fairbanks North Star Borough—Census Area
- City Hall, Old, 410 Cushman St., Fairbanks, 02000561

Georgia

DeKalb County
- Winnona Park Historic District, Roughly bounded by E. College Ave., Avery St., S. Columbia Dr., and Mimosa Dr., Decatur, 02000565

Dodge County
- Eastman Bus Station, 305 College St., Eastman, 02000566

Jackson County
- Oak Avenue Historic District, S of Jct. of Oak Ave. and the Southern RR, Jefferson, 02000564
- Paradise Cemetery, E of Southern RR bet. Lawrenceville St. and Mahaffey Circle, Jefferson, 02000563

Montana

Flathead County
- Swan River Community Hall, 115 Swan River Rd., Swan River, 02000567

North Carolina

Sampson County
- Clinton Commercial Historic District, Roughly bounded bu Vance, Elizabeth, Wall, and Sampson Sts., Clinton, 02000568

South Carolina

Berkeley County
- Cooper River Historic District, (Cooper River MPS), Along the East and West Branches of the Cooper River, Moncks Corner, 02000571

Charleston County
- Murray, Andrew B., Vocational School, 3 Chisolm St., Charleston, 02000569
- Remley Point Cemetery, 0.2 mi. NE of jct. of Third and Fourth Ave., Mount Pleasant, 02000570

South Dakota

Clark County
- Security State Bank, Garfeild St., Willow Lake, 02000577

Hutchinson County
- South Dakota Dept of Trans. Bridge No. 34–202–072, (Historic Bridges in South Dakota MPS), 424th Ave., Parkston, 02000581
- South Dakota Dept. of Trans. Bridge No. 34–120–194, (Historic Bridges in South Dakota MPS), Local Rd. over S. Fork Lonetree Cr., Tripp, 02000579
- South Dakota Dept. of Trans. Bridge No. 34–140–046, (Historic Bridges in South Dakota MPS), 418th Ave., Milltown, 02000583

Kingsbury County
- Bank of the Iroquois Building, Jct. of Washita and Quapaw Sts., Iroquois, 02000576
- Central Dakota Flouring Mill Grain Elevator, 202 E. Elm St., Arlington, 02000573
- Hetland School, (Schools in South Dakota MPS) Park St., Hetland, 02000572
- Lake Preston Tourist Park Historic District, Jct. of US 14 and S. Park Ave., Lake Preston, 02000574
- Stordahl, Olaf, Barn, 45210 199th St., Arlington, 02000575

Lincoln County
- Canton Lutheran Church, 124 E. Second St., Canton, 02000582
- South Dakota Dept of Trans. Bridge No. 42–200–125, (Historic Bridges in South Dakota MPS) Three Mile Rd., Canton, 02000580

Yankton County
- Yankton High School Historic District, (Schools in South Dakota MPS) 613 Walnut St., Yankton, 02000578

Tennessee

De Kalb County
- Alexandria Cemeteries Historic District, (Rural African-American Churches in Tennessee MPS) Cemetery St., Alexandria, 02000584

Virginia

Botetourt County
- Breckinridge Mill Complex (Boundary Increase), 7850 Breckinridge Mill Rd., Fincastle, 02000588

Essex County
- Monte Verde, 405 Monte Verde Rd., Center Cross, 02000586

Fauquier County
- Green Pastures, 2337 Zulla Rd., Middleburg, 02000596
- Morven, 3918 Leeds Manor Rd., Markham, 02000597
- Oaks, The, 8457 Oaks Rd., Warrenton, 02000585

Galax Independent city
- Galax Commericial Historic District, Roughly Main, Center, Grayson, Carroll and Oldtown Sts., Galax, 02000593

Henry County
- Grassdale Farm, 187 Spencer Penn Rd., Spencer, 02000587

Madison County
- Locust Hill, Jct. of US 15, VA 634, and VA 614, Locust Dale, 02000590

Radford Independent city
- Arnheim, 40 Dalton Dr., Radford, 02000589

Richmond Independent city
- Battery Court Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly Dupont C., Edgewood, Fendall, Greenwood, Griffin, Montrose, Moss Side, Noble, North, Edgehill, Graham., Richmond (Independent City), 02000594

Brookland Park Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly Griffin, Fendall, Hanes, Garland, North, Barton, Lamb, Cliff Aves., Norwood, Hooper, Essex, Brookland Park., Richmond (Independent City), 02000591

Town of Barton Heights Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly arton, Fendall, Greenwood, Lamb, Miller, Monterio, North, Rose, Dove, Home, Minor, Poe, Wellford, Wickham., Richmond (Independent City), 02000592

Surry County

Rogers' Store, Jct. of VA 615 and VA 612, Surry, 02000595

Wisconsin

Dane County

University of Wisconsin Dairy Barn, 1915 Linden Dr., Madison, 02000600

La Crosse County

Losey Memorial Arch, 1407 La Crosse St., La Crosse, 02000598

Waupaca County

Lake Street Historic District, Roughly bounded S. Washington St., E. Badger St., Fifth St., and Tioga St. Waupaca, 02000599

[FR Doc. 02–12037 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–471]

Certain Data Storage Systems and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 11, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of EMC Corporation of Hopkinton, Massachusetts. Letters supplementing the complaint were filed on April 12 and 15, and May 6, 2002. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain data storage systems and components thereof by reason of infringement of claims 1–4 and 6–17 of U.S. Letters Patent 5,742,792, claims 1–4 and 9–13 of U.S. Letters Patent 5,544,347, claims 1, 2, 8, 9, 15, 21, and 22 of U.S. Letters Patent 6,092,066, claims 1–10 of U.S. Letters Patent 6,101,497, claims 5–8 of U.S. Letters Patent 6,108,748, and claims 1–4, 9, 11–13, 15, 17, 19, 21–23, 26, 28–30, 33–36, 42–44, 51–53, 60, 61, 65, 68, 69, 73, 76, 77, and 81 of U.S. Letters Patent 5,909,692. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., or Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606 and 202–205–2571, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 8, 2002, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain data storage systems or components thereof by reason of infringement of claim 1–4, 6–16, or 17 of U.S. Letters Patent 5,742,792, claim 1–4, 9–12, or 13 of U.S. Letters Patent 5,544,347, claim 1, 2, 8, 9, 15, 21, or 22 of U.S. Letters Patent 6,092,066, claim 1–9 or 10 of U.S. Letters Patent 6,101,497, claim 5, 6, 7, or 8 of U.S. Letters Patent 6,108,748, and claim 1–4, 9, 11–13, 15, 17, 19, 21–23, 26, 28–30, 33–36, 42–44, 51–53, 60, 61, 65, 68, 69, 73, 76, 77, or 81 of U.S. Letters Patent 5,909,692, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—EMC Corporation, 171 South Street, Hopkinton, MA 01748–9103.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hitachi, Ltd., 6, Kanda-Surugadai 4-chome, Chiyoda-ku, Tokyo, 101–8010, Japan; Hitachi Data Systems Corporation, 750 Central Expressway, Santa Clara, CA 95050–2627.

(c) Karin J. Norton, Esq., and Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further

notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: May 9, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11970 Filed 5–13–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; Tribal Resources Grant Program Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5612 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond:* The estimated amount of time required to respond is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 37.5 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–11986 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; Tribal Hiring Renewal Grant Program Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5610 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses one for each respondent. *The estimated amount of time required for the average respondent to respond:* The estimated time required for the average respondent to respond is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 37.5 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–11987 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired; Universal Hiring Program (UHP) and COPS in Schools (CIS) Grant Applications.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 66, Number 208, page 54286 on October 26, 2001, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection instrument.

(2) *Title of the Form/Collection:* Universal Hiring Program and COPS in Schools Grant Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* none, Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* none. *Abstract:* The application will be used by state, local and tribal law enforcement agencies to apply for Federal funding which will be used to increase the number of sworn law enforcement positions in their agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 2,000 respondents for UHP, and 1,500 for the CIS program. *The amount of estimated time required for the average respondent to respond is:* 9 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 18,000 burden hours annually for UHP and 13,500 for CIS, for a total of 31,500 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice

Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–11988 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Department of Justice Information Quality Guidelines for Information Disseminated to the Public

AGENCY: Justice Management Division.

ACTION: Notice of availability of draft guidelines.

SUMMARY: The Department of Justice, in accordance with Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) and the Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies published in the **Federal Register** on September 28, 2001 (66 FR 49718) and on January 3, 2002 (67 FR 369) (and reprinted in their entirety on February 22, 2002, 67 FR 8452), has posted its draft Information Quality Guidelines for Information Disseminated to the Public on the DOJ Web site, *www.usdoj.gov/02organizations/infoqualityguidance.htm*. These guidelines explain how DOJ will ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by DOJ. The draft guidance also details the administrative mechanisms that will allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by DOJ that does not comply with agency or OMB guidelines.

DATES: Comments on the draft guidance should be received by June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Nelson, (202) 307–1825.

Dated: May 8, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Vance Hitch,

Chief Information Officer.

[FR Doc. 02–11972 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 6, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection

Agency: Bureau of Labor Statistics (BLS)

Title: Consumer Price Index Commodities and Services Survey

OMB Number: 1220–0039

Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government

Estimated Time Per Response and Total Burden Hours:

Form	Total respondents	Frequency	Total annual responses	Minutes per response (average)	Estiamted total burden (hours)
BLS 3400	14,178	Annual	14,178	4	993
BLS 3400A.2	19,105	Annual	19,105	29.76	9,486
BLS 3400B	19,105	Annual	19,105	25.50	8,124
BLS 3400C	1,375	Annual	1,375	6	138
BLS 3401	39,415	Monthly/Bimonthly	343,699	13.8	79,051
Totals	[1] 58,520		[2] 362,804	[3] 15	97,792

[1] The total number of respondents, 58,520, does not reflect the sum of the number of respondents for the five listed forms because the first form only applies to all of our activities that involve initiation, while the second and third forms involves all initiations plus item rotation. The fourth form is only used in a subset of outlets being initiated. The fifth form is used only for the regular pricing of sampled outlets. Thus the total individual respondents impacted by the five forms are 30,415 plus 19,105 = 58,520 respondents.

[2] The annual responses does not reflect the sum of all of the listed responses because, as noted in footnote 1, some forms are used at the same respondent when they are initiated or are part of item rotation. Thus the total annual responses associated with the five forms are 343,699 + 19,105 = 362,804.

[3] The sum of minutes represents a weighted average of the minutes per respondent, using annual responses as a weight.

Total Annualized Capital/Startup Costs: $0

Total Annual Costs (operating/maintaining systems or purchasing services): $0

Description: Section 2 of Title 29, Chapter 1, Subchapter 1, United States Code Annotated directs the Bureau of Labor Statistics (BLS), under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Consumer Price Index (CPI) is the only

index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The collection of prices directly from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the CPI. Respondents include retail establishments throughout the country. If the information were not collected, the consequences to both the Federal and private sectors would be far-reaching and would have serious repercussions on Federal government policy and institutions.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 02–11983 Filed 5–13–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the TPS program. Note that the name of this program was changed from Revenue Quality Control to the Tax Performance System (TPS). A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted to the office listed in the address below on or before July 15, 2002.

ADDRESSES: Rett Hensley, Office of Workforce Security, Employment and Training Administration, Department of Labor, Room S 4522, 200 Constitution Ave., NW., Washington, DC 20210; 202 693–3203 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all states except the Virgin Islands have been required by regulation at 20 CFR part 602 to operate a program to assess their UI tax and benefit programs. TPS developed new measures for tax performance to replace those previously gathered under the Quality Appraisal (QA) system. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies: Computed Measures which are indicators of timeliness and completeness based on data automatically generated via the existing ETA 581 (Office of Management and Budget (OMB) approval number 1205–0178, expiring 8/2002) automated report; and Program Reviews which assess accuracy through a two-fold examination: (a) ''Systems Reviews'' examine tax systems for the existence of internal controls; (b) small samples of those systems' transactions are then examined to verify the effectiveness of controls.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0332.

Agency: Employment and Training Administration, Department of Labor.

Title: Tax Performance System.

OMB Number: 1205–0332.

Affected Public: State government.

Total Respondents: 52.

Frequency: Annually.

Total Responses: 52.

Average time per response: 1750 hours.

Estimated Total Burden Hours: 91,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the extension of the information collection request; they will also become a matter of public record.

Dated: May 8, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–11982 Filed 5–13–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, May 16, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from four (4) Federal Credit Unions to Convert to Community Charters.
2. *Proposed Rule:* Amendments to Part 702 of NCUA's Rules and Regulations, Prompt Corrective Action.
3. *Final Interpretive Ruling and Policy Statement:* Allowance For Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–12072 Filed 5–9–02; 4:28 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the

Leadership Initiatives Advisory Panel, AccessAbility Section, will be held by teleconference from 1 p.m.–2:30 p.m. on Tuesday, June 4, 2002 in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 8, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–11941 Filed 5–13–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairman of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Public Law 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Combined Arts, Fellowships, Leadership Initiatives, Partnership, Special Projects, and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

Information and data are furnished to the Endowment by grant applicants with the expectation that such information will be treated on a confidential basis and not necessarily disclosed to the public until such time as a final funding decision has been rendered. This information may include such matters as details relating to the type of design or work to be performed, adequacy of the applicant's facilities, competence of the applicant's staff, proposed budget, personal biographical data, and other material which would not otherwise be disclosed. If the process were not to continue on a confidential basis, grant applicants would not supply sufficiently detailed information so essential for complete and effective review of their proposals.

Further, public discussion of the merits of proposals not recommended for funding could subject unsuccessful grant applicants to negative speculation about the quality of the applicants' work. Additionally, premature public disclosure might adversely influence or prejudice the decisions of other funding sources in connection with their review of similar proposals.

Endowment consultant-experts are chosen from among persons recognized for their expertise in the arts. These experts review and evaluate applications for financial assistance submitted to the Endowment by their peers and colleagues in the respective cultural fields. As a result, public participation in panel meetings involving application review, during which negative criticisms of an applicant's work are expressed, undoubtedly would affect a consultant-expert's willingness to express his or her full and frank opinion regarding the merits of the proposed project or activity. Accordingly, the Endowment's capacity effectively to carry out its statutory mandate and maintain the highest possible standards of quality with respect to funding recommendations would be seriously impaired by its inability to conduct the application review process in a confidential atmosphere conducive to the candid and honest exchange of ideas. Thus, such public participation would be likely to significantly frustrate the implementation of proposed agency actions, i.e., proposed funding decisions.

Consequently, in the interest of meeting our obligations of confidentiality in reference to matters submitted as part of grant applications, and in order to encourage and ensure, for the benefit of the Government's review and evaluation process, candid and uninhibited expression of views concerning the merits of grant applications and contract proposals:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, and evaluation of grant applications and contract proposals, as outlined herein is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of grant applications, and contract proposals may be closed to the public in accordance with subsection (c)(4)(6), and 9(B) of section 552b of title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in

local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

(1) Name of the committee and its purposes:

(2) Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

(3) A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom rosters of lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

Guidelines

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: May 2, 2002.

Eileen B. Mason,

Acting Chairman, National Endowment for the Arts.

[FR Doc. 02–11940 Filed 5–13–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pubic Law 92–463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection(c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session, including those parts during which applications are reviewed. However, in recognition that the Endowment receives as part of some grant applications non-public proprietary or financial information, I have determined to reserve the right to close limited portions of Council application reviews at which such protected information is specifically discussed. The purpose of closure is to protect the confidentiality of protected information. Closure for this purpose is authorized by subsection (c)(4) of section 552b of Title 5 United States code.

Additionally, at one of its meetings, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During this session information of a personal nature may be discussed. Disclosure of this information about individuals who are unaware that they are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy. Moreover, the premature disclosure of this information would significantly frustrate the nomination and selection of National Medal of Arts recipients.

Therefore, in light of the above, I have determined that the above referenced portion of the July 2002 Council meeting, devoted to consideration of prospective nominees for the National Medal of Arts award, may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) and (9)(B) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: May 2, 2002.

Eileen B. Mason,

Acting Chairman, National Endowment for the Arts.

[FR Doc. 02–11939 Filed 5–13–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power District (OPPD/the licensee), for operation of the Fort Calhoun Station, Unit 1 (FCS) located in Washington County, Nebraska.

The proposed amendment will revise the maximum allowable value of the reactor protective system (RPS) variable high power trip (VHPT) setpoint from 107.0% to 109.0%. Specifically, Technical Specification (TS) Table 1–1, ''RPS Limiting Safety System Settings,'' in the Trip Setpoints column for Trip Number 1 [High Power Level (A) 4-Pump Operation] will be revised from 107.0% to 109.0%. In addition, TS Section 1.3(1), ''Basis,'' describing the high power trip initiation, will be revised from 107.0% to 109.0%.

On March 27, 2002, OPPD requested an amendment to change the high power trip setpoint. OPPD informed the NRC that the revised setpoint for the high power trip needed to be approved prior to exceeding 95% rated power to avoid a potential plant trip due to a hot leg flow streaming anomaly. OPPD requested that the amendment be approved by May 31, 2002, to provide them sufficient time to implement the change. FCS began its Spring refueling outage on May 3, 2002. The outage is scheduled to be completed and power operation is scheduled to resume on May 31, 2002. FCS is currently scheduled to exceed 95% power on June 5, 2002. On May 2, 2002, OPPD was notified by the NRC that the NRC had missed the deadline for publication of the no significant hazards consideration notice in the April 30, 2002, **Federal Register**. Publication in the **Federal Register** was needed by April 30, 2002, to allow the NRC to issue the amendment by May 31, 2002. The NRC

informed OPPD that the **Federal Register** Notice would be issued on May 14, 2002. Therefore, the comment period will not end until June 13, 2002, and the amendment cannot be issued until June 14, 2002. After reviewing the options available for issuing the amendment by May 31, 2002, OPPD concluded that the amendment request needed to be processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not result in a high power trip setpoint that will cause the analysis value of 112.0% to be exceeded. There is no change in the analysis value of 112.0% for the high power trip setpoint used in the evaluation of the transients and accidents. All of the evaluated transients and accidents currently show acceptable results and will not be affected by this change. Changing the high power trip setpoint will not affect the probability of an accident, since that circuit is not a transient or accident initiator. The change to the setpoint will not change the failure possibilities for this circuit. The effect of the proposed change is the reduction in the probability of an undesired safety system challenge initiated by an erroneous high power trip during a flow streaming event.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the RPS high power trip setpoint does not provide the possibility of the creation of a new or different type of accident. Changing the setpoint does not change the method of operation of the high power trip circuit or its expected response once the setpoint is reached. The trip will occur within previously analyzed limits.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed setpoint change does not constitute a significant reduction in the margin of safety due to the fact that the transient and accident analyses contained in the Updated Safety Analysis Report have been evaluated using an analysis trip setpoint of 112.0% with the event initiated from the appropriate power level and have been shown to produce acceptable results.

The acceptance criteria used in the analysis have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 27, 2002, as supplemented by letter dated May 9, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May 2002.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11990 Filed 5–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting.

AGENCY Nuclear Regulatory Commission.

DATES: Weeks of May 13, 20, 27, June 3, 10, 17, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 13, 2002

Thursday, May 16, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)
9:30 a.m.
Meeting with World Association of Nuclear Operators (WANO) (Public Meeting)
This meeting will be webcast live at the Web address *www.nrc.gov.*
11 a.m.
Discussion of Security Issues (Closed—Ex.1)
2 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of May 20, 2002—Tentative

There are no meetings scheduled for the Week of May 20, 2002.

Week of May 27, 2002—Tentative

Tuesday, May 28, 2002

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Wednesday, May 29, 2002

9:25 a.m.
Affirmative Session (Public Meeting), (if needed)
9:30 a.m.
Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301–415–1470)
This meeting will be webcast live at the Web address *www.nrc.gov*.

Week of June 3, 2002—Tentative

Thursday, June 6, 2002

2 p.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of June 10, 2002—Tentative

There are no meetings scheduled for the Week of June 10, 2002.

Week of June 17, 2002—Tentative

There are no meetings scheduled for the Week of June 17, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415—1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on May 6 and 7, the Commission

determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex.1)'' be held on May 16, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 9, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–12118 Filed 5–10–02; 12:09 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 19, 2002 through May 2, 2002. The last biweekly notice was published on April 30, 2002 (67 FR 21283).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed

surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is

less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 28, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.7, ''Auxiliary Electrical Systems,'' and Section 4.6, ''Emergency Power System Periodic Tests,'' to relocate the requirements for the gas turbine generators to the Updated Final Safety Analysis Report and the plans, programs and procedures that document and control the credited functions of these systems, structures, and components. The proposed amendment would also delete TS 3.7.B.2.b to remove the option that allows power operation for up to 72 hours with a gas turbine as the only available 13.8 kilovolt power source.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Gas Turbine Generators only provide a Licensing Basis Event mitigating function. There is no previously evaluated accident or event that is initiated by the Gas Turbine Generators or the associated fuel storage system. The ability of the Gas Turbine Generators to provide power, as a backup to the Emergency Diesel Generators, is not affected by the location of the description of their licensing basis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no physical change to the plant. The currently existing gas turbine generators and associated fuel oil storage facilities will still be used. The only change is to relocate the limiting conditions for operations, surveillance requirements and associated bases from the Technical Specifications to other licensee controlled documents.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The deletion of the limiting conditions for operation and surveillance requirements for the gas turbine generators from the Technical Specifications does not alter the method of operation, the design requirements or the current licensing basis that the gas turbine generators be able to power all the loads required by 10 CFR Part 50, Appendix R to place the plant into a safe shutdown condition following a fire and maintain safe shutdown for three days. It also does not remove the licensing basis requirement of 10 CFR Part 50, Section 50.63, that the unit must have the capacity to withstand and recover from a station blackout. The current licensing

basis will continue to credit the gas turbine generators as the alternate ac (AAC) power source in the event of a station blackout unless modified under the control of 10 CFR Part 50, Section 50.59.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 11, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation (LCO), following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to '' * * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 11, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on [a] margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos.1 and 2, Will County, Illinois

Date of amendment request: March 8, 2002.

Description of amendment request: The proposed amendment is consistent with Technical Specifications Task Force (TSTF) Standard Technical Specification (TS) Change Traveler TSTF–360, Revision 1 and TSTF–204, Revision 3 and proposes to revise TS 3.8.4, ''DC Sources—Operating,'' TS 3.8.5, ''DC Sources—Shutdown,'' TS 3.8.6, ''Battery Cell Parameters,'' and TS 3.8.8, ''Inverters—Shutdown.'' The changes associated with TSTF–360, Revision 1, add new Required Actions and extend the Completion Times in TS 3.8.4 and TS 3.8.5 and also include the relocation to a licensee-controlled program of a number of Surveillance Requirements (SRs) in TS 3.8.4 and TS 3.8.6. The changes associated with TSTF–204, Revision 3, revise TS 3.8.5 and TS 3.8.8 to change requirements for DC electrical power subsystem and inverters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise TS 3.8.4, ''DC Sources—Operating,'' TS 3.8.5, ''DC Sources—Shutdown,'' TS 3.8.6, ''Battery Cell Parameters,'' and TS 3.8.8, ''Inverters—Shutdown.''

TS 3.8.4, TS 3.8.5, and TS 3.8.6 have been revised to 1) add new Required Actions and extend the Completion Time for an inoperable battery charger, 2) provide alternate battery charger testing criteria for TS 3.8.4 and TS 3.8.5, 3) relocate to a licensee-controlled program a number of Surveillance Requirements (SRs) in TS 3.8.4 that perform preventive maintenance on the safety-related batteries, 4) relocate TS Table 3.8.6–1, ''Battery Cell Parameters Requirements,'' to a licensee-controlled program, 5) add to TS 3.8.6 specific Required Actions associated with out-of-limits conditions for battery cell float voltage, float current, electrolyte level, and electrolyte temperature, and 6) add a new administrative TS program for the maintenance and monitoring of station batteries based on the recommendations of Institute of Electrical and Electronics Engineers (IEEE) Standard 450–1995, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications.'' In addition, TS 3.8.5 and TS 3.8.8 have been revised to require only one DC electrical power subsystem and two inverters, respectively, during shutdown conditions.

The DC Sources, Battery Cell Parameters, and Inverters are not initiators of any accident sequence analyzed in the Byron/Braidwood Stations' Updated Final Safety Analysis Report (UFSAR). As such, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of Design Basis Accident (DBA) and transient analyses in the Byron/Braidwood Stations' UFSAR assume Engineered Safety Feature (ESF) systems are operable. The AC and DC electrical power distribution systems are designed to provide sufficient capacity, capability, redundancy, and reliability to ensure the availability of necessary power to ESF systems so that the fuel, Reactor Coolant System, and containment design limits are not exceeded. The operability of the AC and DC electrical power distribution systems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed changes. The operability of the AC and DC electrical power distribution systems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analyses.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new administrative TS program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the AC and DC electrical power distribution systems will continue to provide adequate power to safety-related loads in accordance with analyses assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station Units 2 and 3, York County, Pennsylvania

Date of application for amendments: March 19, 2002.

Description of amendment request: The proposed amendment would allow plant operation to continue if the temperature of the Normal Heat Sink (NHS) exceeds the Technical Specification (TS) limit of 90 °F provided the water temperature, averaged over the previous 24-hour period, is at or below 90 °F. The proposed operational flexibility would only apply if the NHS temperature is between 90 °F and 92 °F. The current action time requirements would still apply if the NHS temperature exceeds 92 °F, or if the 24-hour averaged value exceeds 90 °F. The current TS Limiting Condition for Operation (LCO) limit of 90 °F would not be changed. In addition, an administrative change would remove references to a temporary TS change which had expired on May 31, 2000. The Bases for the associated TS would also be modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24 hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. This increase in NHS temperature will not affect the normal operation of the plant to the extent that it would make any accident more likely to occur. In addition, there exists adequate margin in the safety systems and safety-related heat exchangers to assure the design safety functions are met at the higher temperature.

The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid.

Thus, the proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design-basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS

limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24-hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. This will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following a design-basis accident is unaffected by the changes. In addition, the NHS is not an accident initiator and the design-basis heat removal capability of the affected safety-related components is maintained at the increased NHS temperature limit. The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24-hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. The licensee performed an evaluation of the safety systems to ensure their safety functions can be met with a NHS water temperature of 92 °F. The higher NHS temperature represents a slight reduction in the margins of safety in terms of these systems' abilities to remove accident heat loads. As part of its evaluation, however, the licensee verified that these safety systems will still be able to perform their design-basis functions.

The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design-basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design-basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: April 8, 2002.

Description of amendment request: The amendment would revise the safety limit minimum critical power ratio for two-loop and single-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Quad Cities Nuclear Power Station (QCNPS), Unit 1 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revised the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9 percent of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for QCNPS, Unit 1.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1 percent of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9 percent of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 18, 2002.

Description of amendment request: The proposed amendment would revise

Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 18, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Thomas Koshy.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: April 11, 2002.

Description of amendment requests: The proposed amendments would revise the Surveillance Requirements for containment leakage rate testing in Technical Specification (TS) 4.6.1.2 to allow a one-time extension of the interval between integrated leakage rate tests (ILRTs) from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated—

The proposed change to extend the ILRT interval from 10 to 15 years does not affect any accident initiators or precursors. The containment liner function is purely mitigative. There is no design basis accident that is initiated by a failure of the containment leakage mitigation function. The extension of the ILRT will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated—

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the ILRT interval from 10 to 15 years. The increase in risk in terms of person rem per year within 50 miles resulting from design basis accidents was estimated to be of a magnitude that NUREG–1493 indicates is imperceptible. I&M has also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed extension was determined to be within the guidelines published in Regulatory Guide 1.174. Additionally, the proposed change maintains defense in depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. I&M has determined that the increase in conditional containment failure probability from reducing the ILRT frequency from 1 test per 10 years to 1 test per 15 years would be small. Continued containment integrity is also assured by the history of successful ILRTs, and the established

programs for local leakage rate testing and inservice inspections which are unaffected by the proposed change. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to extend the ILRT interval from 10 to 15 years does not create any new or different accident initiators or precursors. The length of the ILRT interval does not affect the manner in which any accident begins. The proposed change does not create any new failure modes for the containment and does not affect the interaction between the containment and any other system. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The risk-based margins of safety associated with the containment ILRT are those associated with the estimated person-rem per year, the large early release frequency, and the conditional containment failure probability. I&M has quantified the potential effect of the proposed change on these parameters and determined that the effect is not significant. The non-risk-based margins of safety associated with the containment ILRT are those involved with its structural integrity and leak tightness. The proposed change to extend the ILRT interval from 10 to 15 years does not adversely affect either of these attributes. The proposed change only affects the frequency at which these attributes are verified. Therefore, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 22, 2002.

Description of amendment request: The proposed amendments change Seabrook Station Technical Specification (TS) 3/4.9.13, Spent Fuel Assembly Storage, and associated TS Figures and Index. The licensee will also revise the Bases to reflect the license amendment. The proposed changes reflect a revised criticality safety analysis supporting a two-zone spent fuel pool, consisting of BORAFLEX® and Boral® fuel assembly storage racks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient, or accident conditions. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). Furthermore, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient, or accident conditions. The changes do not introduce a new mode of plant operation. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel. The plant's design and design basis are not revised and the current safety analyses remains in effect. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not adversely affect the safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as specified in the Technical Specifications nor is the plant design revised by the proposed changes. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel. Administrative control measures (e.g., procedures) will continue to be in place to ensure the safe placement of fuel assemblies within the spent fuel pool so as to remain less than or equal to 0.95 K_{eff} as required by TS 5.6.1.1 for spent fuel storage. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William J. Quinlan, Esq., Assistant General Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 21, 2001.

Description of amendment request: The proposed amendment would revise the Containment Systems Section of the Technical Specification (TS) to clarify existing requirements, make wording improvements, revise existing limiting condition for operations (LCO) and surveillance requirements (SR), and add an additional TS LCO to the Monticello TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee, Nuclear Management Company, LLC (NMC) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, adding a time limit in which to restore oxygen concentration in the containment to within limits, and clarifying specific use and actions for Primary Containment Isolation Valves, are not initiators of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment referenced in the proposed changes is still required to be operable and capable of performing its accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant, no new or different type of equipment will be installed. Nor, are there significant changes in the methods governing normal plant operation. Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, restructuring the TS to provide clear Action Statements where needed; adding a time limit in which to restore oxygen concentration in the containment to within limits; and clarifying specific use and actions for Primary Containment Isolation Valves will not lead to an accident beyond those previously evaluated.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, restructuring the TS to provide clear Action Statements where needed; adding a time limit in which to restore oxygen concentration in the containment to within limits; and clarifying specific use and actions for Primary Containment Isolation Valves does not result in a significant reduction in the margin of safety. Allowing up to 2 hours to restore level, is acceptable because the suppression pool water level does not change rapidly during normal operation, and during operations that do create changes to the suppression pool water level, the level of the pool is closely monitored. The changes that provide specific LCO action statements for allowed time to place the reactor in a condition in which the LCO is no longer applicable are acceptable based on industry practices and engineering judgements. Adding an additional LCO which places a specified time limit on oxygen concentration greater than or equal to 4% by volume is acceptable because it provides a TS requirement which limits additional oxygen in the containment. Providing a revision to the LCO for inoperable primary containment isolation valves is acceptable because it clarifies what is specifically required for this method of isolation, and changing the interval at which deactivated and isolated valves must be recorded from daily to monthly is acceptable because the devices are operated under administrative controls and the probability of their misalignment is low. Relocating TS requirements is acceptable because it places the requirement for limiting the use of the purge and vent valves in a more appropriate TS and rewording the LCO is acceptable because it provides clarification for use of the purge and vent valves.

Therefore, these proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 20, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.8, ''Service Water (SW) System,'' which is applicable in Modes 1, 2, and 3, to allow the SW system to be operable with five operable SW pumps, provided one Unit is in Mode 5 or Mode 6, or defueled, and the SW system is capable of providing required cooling water flow to required equipment. The proposed amendment would change the existing TS requirement which now requires that both units be in Mode 5 (cold shutdown) within 36 hours if five of the total of six SW pumps are operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The SW System is primarily a support system for systems required to be operable for accident mitigation. Failures within the SW System are not an initiating condition for any analyzed accident.

The SW System removes the required heat from the containment fan coolers and residual heat removal heat exchangers ensuring containment pressure and temperature profiles following an accident are as evaluated in the [Final Safety Analysis Report] FSAR. This in turn ensures that environmental qualification of equipment inside containment is maintained and thus function as required post-accident. Single Unit operation with five operable SW pumps will continue to be capable of supplying the required cooling water flow to systems required for accident mitigation.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that the SW System will be able to perform all of its design basis functions within the design limits of the system. These changes do not introduce any new or different normal

operation or accident initiators. Therefore, operation of the SW System as proposed will not create any new failure mechanisms.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The SW System functions to mitigate the effects of accidents. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs [structure, system and components] important to safety. Therefore, reducing the required number of operable SW pumps from six to five with one Unit in Mode 5 or 6, or defueled, while maintaining the capability of required flow to required equipment, will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 27, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.3.1, ''Limiting Safety Systems Settings, Reactor Protective System,'' to change the high power trip setpoint from 107.0% to 109.0%. This complies with the regulatory requirements in 10 CFR part 50 Appendix A, Criterion 10 and 20 by continuing to protect the fuel from exceeding the design basis limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not result in a high power trip setpoint that will cause the analysis value of 112.0% to be exceeded. There is no change in the analysis value of 112.0% for the high power trip setpoint used in the evaluation of the transients and accidents. All of the evaluated transients and accidents currently show acceptable results and will not be affected by this change. Changing the high power trip setpoint will not affect the probability of an accident, since that circuit is not a transient or accident initiator. The change to the setpoint will not change the failure possibilities for this circuit. The effect of the proposed change is the reduction in the probability of an undesired safety system challenge initiated by an erroneous high power trip during a flow streaming event.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the RPS [reactor power system] high power trip setpoint does not provide the possibility of the creation of a new or different type of accident. Changing the setpoint does not change the method of operation of the high power trip circuit or its expected response once the setpoint is reached. The trip will occur within previously analyzed limits.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed setpoint change does not constitute a significant reduction in the margin of safety due to the fact that the transient and accident analyses contained in the Updated Safety Analysis Report have been evaluated using an analysis trip setpoint of 112.0% with the event initiated from the appropriate power level and have been shown to produce acceptable results.

The acceptance criteria used in the analysis have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 29, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications to allow the use of the pressure-temperature curves approved in Amendment No. 131 for an additional cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment to revise the technical specifications to extend the use of the pressure-temperature (P–T) limits does not affect the operation or configuration of any plant equipment. Thus, no new accident initiators are created by this change. The proposed change extends the use of the P–T limits for an additional cycle. The P–T limits are based on the projected reactor vessel neutron fluence at 32 effective full power years (EFPY) of operation. At the end of cycle 10, Hope Creek Generating Station (HCGS) was at approximately 12.2 EFPY of operation (38.1% of the 32 EFPY). At the end of cycle 12 there will remain sufficient margin to ensure that the current 32 EFPY fluence projections will not be exceeded. This ensures that the basis for proposed applicability of the current P–T limits is conservative for use until the end of cycle 12 ensuring that the reactor vessel integrity is protected under all operating conditions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment revises the technical specifications to extend the use of the pressure-temperature (P–T) limits. It does not change the design function or operation of any systems, structures, or components. Plant operation will not be affected by the proposed amendments and no new failure mechanisms, malfunctions or accident initiators will be created. The current P–T limits will remain valid and conservative during the proposed extension period. The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change extends the use of the current P–T limits for an additional cycle of operation. The P–T limits are based on the projected reactor vessel neutron fluence at 32 EFPY of operation. At the end of cycle 10 in April 2000, HCGS was at approximately 12.2 EFPY of operation (38.1% of the 32 EFPY). At the end of cycle 12, HCGS will have obtained less than 50% of the 32 EFPY operating time which provides significant margin to ensure that the current 32 EFPY fluence projection will not be exceeded. The current margin of safety for plant operations is established by the P–T curves analyzed at 32 EFPY. Because the proposed change will not exceed this fluence, the current margin of safety is maintained. The proposed change, therefore, does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 3, 2002.

Description of amendment request: The proposed amendment would relocate parts of Technical Specification (TS) 3/4.4.4, ''Reactor Coolant System—Chemistry,'' from the TS to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Conductivity, chloride, and pH limits are not assumed to be an initiator of any analyzed event, nor are these limits assumed in the mitigation of consequences of accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve the modification of any plant equipment and does not change the method by which any safety-related system performs its function. The current safety analysis assumptions are not altered as a result of this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change represents the relocation of current TS requirements to the UFSAR based on regulatory guidance and previously approved changes for other stations. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. Margins of safety are unaffected by requirements that are retained but relocated from the TS to the UFSAR.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 25, 2002, as supplemented by the letter dated April 23, 2002.

Brief description of amendments: The proposed change would revise the current Technical Specification (TS) 3.7.3 to adopt the version of the same TS in NUREG–1431, ''Standard Technical Specifications for Westinghouse Plants,'' Revision 2, to add, among other things, operability requirements for Feedwater Control Valves (FCV) and Associated Bypass Valves, and would allow for the extended out-of-service time for one or more Feedwater Isolation valves (FIVs). In addition, a footnote, which allowed a one-time extension for Condition A Completion Time, is being deleted because it is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the Completion Time for one or more Feedwater Isolation Valves (FIVs) inoperable from 4 hours to 72 hours. Extending the Completion Time is not an accident initiator and thus does not change the probability that an accident will occur. However, it could potentially affect the consequences of an accident if an accident occurred during the extended unavailability of the inoperable FIV. The increase in time that the FIV is unavailable is small and the probability of an event occurring during this time period, which would require isolation of the Main Feedwater flow paths, is low. Moreover, the redundancy provided by the Feedwater Control Valves, which have [the] same actuation signals and closure time requirements as the FIVs, provides adequate assurance that automatic feedwater isolation will occur if called upon.

The deletion of the footnote, which is no longer applicable, is an administrative change and does not affect the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Closure of the FIVs is required to mitigate the consequences of a Main Steam Line Break and Main Feedwater Line Break accidents. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The deletion of the footnote, which is no longer applicable, is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not change any Technical Specification Limit or accident analysis assumption. Therefore they do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 27, 2002.

Brief description of amendments: The proposed change would revise Technical Specification (TS) 5.3.1 to require that each member of the unit staff, with the exception of Licensed Reactor Operators (RO) and Licensed Senior Reactor Operators (SRO), shall meet or exceed the minimum qualifications of Regulatory Guide 1.8, Revision 2, 1987. Also, a new TS 5.3.2 would be added to require that the Licensed RO and Licensed SRO shall meet or exceed the minimum qualifications of Regulatory Guide 1.8, Revision 3, May 2000 and the current TS 5.3.2 would be renumbered to TS 5.3.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. These changes conform to the current requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC [Nuclear Regulatory Commission] considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. TXU Energy's [TXU Generation Company LP] licensed operator training program is accredited by INPO [Institute of Nuclear Power Operations] and is based on a systematic approach to training.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and [the] licensed operator training program, and to conform to the revised 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and based on a systems approach to training. As previously noted, TXU Energy's licensed operator training program is accredited by INPO and is based on a systems approach to training.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator training program. This change is consistent with the requirements of 10 CFR [Part] 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, TXU Energy's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO-accredited, systems approach-based licensed operator training program is equivalent to maintaining [an] NRC-approved licensed operator training program which conform[s] with applicable NRC Regulatory Guides or NRC-endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO-accredited licensed operator training program.

In addition, the NRC has recently published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''* * * to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants.'' This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somerville County, Texas

Date of amendment request: April 1, 2002.

Brief description of amendments: This proposed amendment would include topical report ERX–2001–005, ''ZIRLO™ Cladding and Boron Coating Models for TXU Electric's Loss of Coolant Accident Analysis Methodologies,'' in the list of approved methodologies for use in generating the Core Operating Limits Report in Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR).'' In addition, the proposed change would include ZIRLO™ clad in the description of the fuel assemblies in TS 4.2.1, ''Fuel Assemblies.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Administrative changes to the Technical Specifications that do not affect the accident analyses cannot change the probability of an accident previously evaluated, nor will it increase radiological consequences predicted by the analyses of record. Controlling the use of fuel assemblies within limitations previously approved by the NRC [U.S. Nuclear Regulatory Commission] constrains fuel performance to within limits bounded by

existing design basis accident and transient analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of ZIRLO™ clad fuel assemblies in accordance with NRC approved methodologies and of a design approved by the NRC ensures that their effect on core performance remains within existing design limits. Use of fuel assemblies whose design has been previously approved by the NRC is consistent with current plant design bases, does not adversely affect any fission product barrier, and does not alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. Currently licensed design basis accident and transient analyses of record remain valid.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. This proposed change to TSs 4.2 and 5.6.5 is bounded by existing limits on reactor operation. It leaves current limitations for use of fuel assemblies in place, conforms to plant design bases, is consistent with the safety analyses as accepted in the topical report, and limits actual plant operation within analyzed and NRC approved boundaries.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: February 15 and November 7, 2001, and March 1, 2002.

Description of amendment request: The proposed amendment would revise paragraph d.1.j (2) in Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program.'' The revision would (1) delete the requirement that all SG tubes containing an Electrosleeve, a Framatome proprietary process, be removed from service within two operating cycles following installation of the first Electrosleeve; (2) add the requirement that Electrosleeves will not be installed in the outermost periphery tubes of the SG bundles where potentially locked tubes would cause high axial loads; (3) revise the references describing electrosleeving; and (4) add the requirement that all sleeves with detected inside diameter (ID) flaw indications will be removed from service upon detection. The requirement to remove SG tubes containing electrosleeves in two operating cycles was incorporated in TS 5.5.9 in Amendment No. 132 issued May 21, 1999. The first Electrosleeve tube was installed in the fall of 1999 and the two-cycle allowance will expire in the fall of 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would remove the restriction that requires all steam generator tubes repaired with Electrosleeves to be removed from service at the end of two operating cycles following installation of the first Electrosleeve. This would allow all steam generator tubes repaired with Electrosleeves to remain in service. Reference 2 [licensee's letter dated October 27, 1998] concluded that there was no significant increase in the probability or consequences of an accident previously evaluated when using the Electrosleeve repair method. The two operating cycle restriction was invoked because the NRC staff concluded that the UT [ultrasonic] methods used to perform NDE [nondestructive examination] for inservice inspections of the Electrosleeved tubes could not reliably depth size stress corrosion cracks to ensure that structural limits are maintained.

Revision 4 to topical report BAW–10219P [nonproprietary version is attached to the application] has addressed the concerns that resulted in the restriction of two operating cycles and consequently, the probability of an accident previously evaluated is not significantly increased. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. Reference 2 concluded that the use of the Electrosleeve repair method did not create the possibility of a new or different kind of accident from any accident previously evaluated when using this method to repair steam generator tubes. This proposed change removes the two operating cycle limit for the Electrosleeved tubes based on the evaluations and justifications of the NDE techniques used to perform inservice examinations of the Electrosleeved steam generator tubes provided in Revision 4 of the topical report.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for an analyzed event. The margin of safety presently provided by the structural integrity of the steam generator tubes remains unchanged. Reference 2 concluded that the use of the Electrosleeve repair method did not involve a significant reduction in a margin of safety when using this method to repair steam generator tubes. The proposed change removes the two operating cycle limit based on the evaluations and justifications presented in Revision 4 of the topical report.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The reference to ''Reference 2'' in the criteria above is a reference to the licensee's letter dated October 27, 1998, and the no significant hazards consideration (NHSC) in that letter, which was published in the **Federal Register** (63 FR 66604) on December 2, 1998. This NHSC is applicable to the current application letters because it applies to the use of Electrosleeved steam generator tubes, the subject of the current application letters.

The NRC staff published an earlier Notice of Consideration for the application dated February 15, 2001, in the **Federal Register** on March 21, 2001 (66 FR 15931).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 26, 2002.

Description of amendment request: Revise the definition of Operable in Technical Specification (TS) 1.0.K with respect to support system requirements for AC power sources. Conforming changes are made to specific support system TSs in Sections 3/4.5, ''Core and Containment Cooling Systems,'' 3/4.7, ''Station Containment Systems,'' and 3/4.10, ''Auxiliary Electrical Power Systems,'' and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised definition of ''Operable'' redefines the AC power source requirements to allow either normal or emergency power available for equipment requiring AC power to be considered operable and provides conforming changes to specific supported system Technical Specifications. None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. The proposed change does not affect the ability of the AC power sources to perform their required safety functions nor does the proposed change affect the ability of the systems requiring AC power to perform their respective safety functions. As a result, the ability of these systems to mitigate accident consequences is unchanged. As such, these changes do not impact initiators of analyzed events, nor the analyzed mitigation of design basis accident or transient events.

More stringent requirements for the inoperable AC power source action provisions that ensure availability of all TS required systems, subsystems, trains, components, and devices and the purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event.

The elimination of some explicit requirements to verify the operability of remaining equipment (i.e., to verify which TS action is required to be entered and taken) does not affect the initiation of any event, nor does it negatively impact the mitigation of any event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modification to the plant, change in Technical Specification setpoints, change in plant design basis, or a change in the manner in which the plant is operated. No new or different type of equipment will be installed. No safety-related equipment or safety functions are altered as a result of these changes. In addition, there are no changes in methods governing normal plant operation. No new accident modes are created since plant operation is unchanged. None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. The changes do not introduce any new accident or malfunction mechanism that could create a new or different kind of accident, thus, no new failure mode is created. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not involve a significant reduction in a margin of safety.

The manner in which plant systems relied upon in the safety analyses to provide plant protection is not changed. Plant safety margins continue to be maintained through the limitations established in the Technical Specifications Limiting Conditions for Operation and Actions. These changes do not impact plant equipment design or operation, and there are no changes being made to safety limits or safety system settings that would adversely affect the ability of the plant to respond as assumed in the accident analyses as a result of the proposed changes. Since the changes have no effect on any safety analysis assumptions or initial conditions, the margins of safety in the safety analyses are maintained.

In addition, administrative changes that do not change technical requirements or meaning, and the imposition of more stringent requirements to ensure operability, have no negative impact on margins of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 19, 2002.

Description of amendment request: The proposed Technical Specification changes involve the removal of the existing scram function and Group 1 isolation valve closure functions of the Main Steam Line Radiation Monitors (MSLRM). An explicit requirement for periodic functional test and calibration of the MSLRM is added to maintain operability of the mechanical vacuum pump trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram and Group 1 isolation functions of the MSLRMs do not serve as initiators for any of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR). The MSLRM scram function is not credited in the UFSAR, and the Group 1 isolation trip function of the MSLRMs was only assumed in one design-basis event which was the control rod drop accident. Because these functions are not initiators of accidents, their removal does not increase the probability of occurrence of previously evaluated accidents.

There is no accident analysis that relies on the high radiation scram of the reactor protection system and its removal has no impact on the consequences of accidents previously evaluated. The results of the control rod drop accident analysis remain within approved guidelines.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes to the plant involve limited changes to protective circuitry, but do not involve any plant hardware changes that could introduce any new failure modes. The changes will not affect non-MSLRM scram and isolation functions. In addition, the MSLRMs will remain active for other trip/isolation functions, and these monitors will still alarm in the control room to alert operators to off-normal conditions. The reconstituted design-basis control rod drop accident analysis does not rely upon the trip functions that are being eliminated.

Therefore, the removal of the Group 1 isolation valve closure and scram functions of the MSLRMs does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change involves the elimination of the scram and Group I isolation signal from the MSLRMs. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The effects of the control rod drop accident without the MSLRM scram and isolation signal results in doses which remain well within 10 CFR Part 100, ''Reactor Site Criteria,'' limits. The proposed changes will reduce the chances of unnecessary plant trips occurring as a result of an inadvertent MSLRM scram or Group I isolation.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request: March 28, 2002.

Description of amendments request: This requested amendment would permit Virginia Electric and Power Company (VEPCO) to replace the existing Westinghouse fuel with Framatome ANP Advanced Mark-BW fuel at North Anna Power Station, Units 1 and 2. The accompanying requested exemptions from 10 CFR 50.44 and 10 CFR 50.46 will be processed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased. The Advanced Mark-BW fuel is very similar in design to the Westinghouse fuel that is being replaced in the core. The reload core designs for North Anna cycle will meet all applicable design criteria. [VEPCO] will use the NRC-approved standard reload design models and methods to demonstrate that all applicable design criteria and all pertinent licensing basis criteria will be met. Evaluations will be performed as part of the cycle specific reload safety analysis to confirm that the existing safety analyses remain applicable for operation of the Framatome Advanced Mark-BW fuel.

Operation of the Advanced Mark-BW fuel will not result in a measurable impact on normal operating plant releases, and will not increase the predicted radiological consequences of accidents postulated in the UFSAR [Updated Final Safety Analysis Report]. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created. The Framatome Advanced Mark-BW fuel is very similar in design (both mechanical and composition of materials) to the resident Westinghouse fuel. The North Anna core in which the fuel operates will be designed to meet all applicable design criteria and ensure that all pertinent licensing basis criteria are met. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. North Anna safety analyses have demonstrated in Section 6.0 of [the March 28, 2002 submittal] that the use of Advanced Mark-BW fuel is acceptable. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the Advanced Mark-BW fuel does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. The margin of safety is not significantly reduced. The operation of Advanced Mark-BW fuel does not change the performance requirements on any system or component such that any design criteria will be exceeded. The normal limits on core operation defined in the North Anna Technical Specifications will remain applicable for the use of Advanced Mark-BW fuel. The reload core designs for the cycles in which the Advanced Mark-BW fuel will operate will specifically evaluate any pertinent differences between the Advanced Mark-BW fuel product and the current Westinghouse fuel product, including both the mechanical design differences and the past irradiation history. The use of Advanced Mark-BW fuel will be specifically evaluated during the reload design process using [VEPCO's] reload design models and methods approved by the NRC. North Anna safety analyses have demonstrated in Section 6.0 of [the March 28, 2002 submittal] that the use of Advanced Mark-BW fuel is acceptable. Therefore, the margin of safety as defined in the Bases to the North Anna Units 1 and 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: January 31, 2002, as supplemented on March 27, 2002.

Brief description of amendments: The amendment allows a one-time 5-year extension, for a total of 15 years, for the performance of the next Unit 1 integrated leak rate test (ILRT). The amendment also exempts Unit 1 from the requirement to perform a post-modification containment ILRT associated with the steam generator replacement.

Date of issuance: May 1, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 252.

Renewed Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7413). The March 27, 2002, supplemental letter provided clarifying information that did not change the scope of the original notice or the initial proposed no significant hazards consideration. The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 1, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 25, 2001, as supplemented by letter dated January 24, 2002.

Brief description of amendments: The amendments eliminated response time testing requirements for selected sensors and specified instrumentation loops for the Engineered Safety Features and the Reactor Trip System.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be impl

emented within 30 days from the date of issuance.

Amendment Nos.: 197, 190.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64290). The supplement dated January 24, 2002, provided clarifying information that did not change the scope of the May 25, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 20, 2001, as supplemented by letters dated February 14, and March 26, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate NRC-approved Technical Specification Task Force (TSTF) Traveler TSTF–51, ''Revise containment requirements during handling irradiated fuel and core alterations,'' Revision 2. The amendments selectively adopted the Alternate Source Term specifically for a fuel handling accident and a weir gate drop accident at Catawba Nuclear Station, Units 1 and 2.

Date of issuance: April 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 198/191.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7415). The supplements dated February 14, and March 26, 2002, provided clarifying information that did not change the scope of the December 20, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 28, 2000, as supplemented by letters dated February 15, April 26, June 26, and October 31, 2001, and March 4, 2002.

Brief description of amendments: The amendments revised the Technical Specifications related to controls to ensure acceptable margins of subcriticality in the spent fuel pools to account for Boraflex degradation.

Date of Issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 323, 323, 324.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 7, 2001 (66 FR 9382). The supplements dated February 15, April 26, June 26, and October 31, 2001, and March 4, 2002, provided clarifying information that did not change the scope of the December 28, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 20, 2001.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to eliminate the use of the term ''unreviewed safety question,'' and replace the word ''involve'' with the word ''require'' as it applies to changes made to the updated Final Safety Analysis Report and the TS Bases.

Date of Issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 324, 325.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2923). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: March 22, 2002, as supplemented by letter dated March 28, 2002.

Brief description of amendment: The amendment modifies Technical Specification Surveillance Requirement (SR) 3.6.1.3.6 to add a footnote specifying that the isolation time of each main steam isolation valve (MSIV) include circuit response time and valve motion time until the next outage greater than 72 hours.

Date of issuance: April 25, 2002.

Effective date: April 25, 2002.

Amendment No.: 175.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 16767 dated April 8, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 8, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Washington and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 25, 2002.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 7, 2001 as revised December 17, 2001.

Brief description of amendment: The amendment revised the Post Accident Monitoring Instrumentation Technical Specifications to ensure that licensee commitments to Regulatory Guide 1.97 are properly reflected.

Date of issuance: April 25, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 211.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5328). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 21, 2001, as supplemented by letter dated January 31, 2002.

Brief description of amendments: The amendments revise the reactor core safety limit for peak fuel centerline temperature from less than or equal to 4700 °F (i.e., the current technical specifications limit) to the design-basis fuel centerline melt temperature of less than 5080 °F, for unirradiated fuel, decreasing by 58 °F per 10,000 Megawatt-Days per MetricTonne Uranium (MWD/MTU) burnup. Additionally, the licensee is allowed to irradiate four ZIRLO clad rods to 69,000 MWD/MTU that are currently in Byron Unit 2 reactor. The staff denied a portion of the amendment request regarding extending burnup limit up to 75,000 MWD/MTU for future lead test assembly (LTA) campaigns. A separate Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing has been published in the **Federal Register**.

Date of issuance: April 19, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 127 and 122.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59505). The supplemental letter dated January 31, 2002, contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 30, 2001.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less,'' to, ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 19, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 205 and 201.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7417). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 25, 2002.

Brief description of amendments: These amendments revised the Technical Specifications requirement for pressure testing diesel fuel oil

system piping. The elevated pressure test will be replaced by a test at normal system operating conditions in accordance with the inservice inspection program.

Date of Issuance: April 23, 2002.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 181 and 124.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7419). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: November 16, 2001, as supplemented March 12, 2002.

Brief description of amendment: The amendment revises TS Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation Trip Setpoints.'' The changes are required as part of a planned design change to replace the existing 4kV offsite power transformers, loss of voltage relays, and degraded voltage relays with components of an improved design to increase the reliability of offsite power for safety-related equipment.

Date of issuance: April 19, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 268.

Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001, (66 FR 64298). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: April 9, 2002, as supplemented April 25, 2002.

Description of amendment request: The amendment revises Technical Specification Surveillance Requirement 4.8.2.3.c.1 for the Train AB and CD batteries. The amendment modifies the requirement to verify that the Train AB and CD battery cells, cell plates, and racks show no visual indication of physical damage or abnormal deterioration. The amendment allows batteries exhibiting damage or deterioration to be determined operable by an evaluation. The amendment is consistent with an NRC-approved change to the Standard Technical Specifications for Westinghouse plants (NUREG 1431, Revision 1), as documented in Technical Specification Task Force Standard Technical Specification Change Traveler-38, ''Revise visual surveillance of batteries to specify inspection is for performance degradation.''

Date of issuance: April 26, 2002.

Effective date: As of the date of issuance, to be implemented immediately.

Amendment No.: 249.

Facility Operating License No. DPR–74: Amendment revise the technical specifications. Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. April 25, 2002 (67 FR 20552).

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated April 26, 2002.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 1, 2002, as supplemented by letters dated April 10 and April 15, 2002.

Brief description of amendment: This amendment adds an exception to the technical specifications to perform the surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls while components in excess of those allowed by Conditions a, b, d, and e of TS 2.3(2) are maintained operable by dedicated operator action and are required to be returned to operable status within one hour. This exception will apply only to the remainder of Cycle 20 and the entirety of Cycle 21.

Date of issuance: April 19, 2002.

Effective date: April 19, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 206.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 16130 dated April 4, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 6, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Nebraska and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 19, 2002.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001, as supplemented by letter dated February 13, 2002.

Brief description of amendment: The amendment deletes technical specification (TS) Figures 2–1A (Reactor Coolant System (RCS)—Temperature Limits for Heatup) and 2–1B (RCS Pressure—Temperature Limits for Cooldown) and replaces them with a single Figure 2–1. Additionally, the amendment changes the lowest service temperature from 182 ° F to 164 ° F to be in compliance with Reference 4, American Society of Mechanical Engineers (ASME) Section III, NB–2332 and the basis for the minimum boltup temperature to be in compliance with Reference 5, ASME Section XI, Appendix G. The Bases for TS 2.1 is being updated to reflect the use of ASME Code Case N–640 and the Westinghouse Electric Company/ Combustion Engineering (W/CE) pressure temperature (P–T) limit curve methodology as applicable. Finally, based on the replacement of Figures 2–1A and 2–1B with a single Figure 2–1, the following TS are changed: 2.1.1(8), 2.1.2(1), 2.1.2(2), 2.1.2(6), 2.1.2(6)(a), 2.1.2(6)(c), 2.1.2(6)(d), and 2.1.6(4) as they reference the deleted curves.

Date of issuance: April 22, 2002.

Effective date: April 22, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2928). The February 13, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001, as supplemented by letter dated February 13, 2002.

Brief description of amendment: The amendment reformats and revises Technical Specifications (TSs) 2.15(5) and (6), ''Instrumentation and Control Systems.'' The new TSs clarify the scope of the alternate shutdown panels (ASPs). The change resulted from a corrective action needed to address the regulatory requirements for the ASPs and the associated auxiliary feedwater panel, as documented in Licensee Event Report 97–002, Revision 0, dated May 14, 1997.

Date of issuance: April 25, 2002.

Effective date: April 25, 2002, to be implemented within 60 days from the date of issuance.

Amendment No.: 208.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66470). The February 13, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 16, 2001.

Brief description of amendments: The amendments revised Technical Specification Section 5.5.16, ''Containment Leakage Rate Testing Program,'' to allow a one-time extension of the 10 CFR Part 50, Appendix J, Type A integrated leak rate test interval from the required 10 years to a test interval of 15 years.

Date of issuance: April 22, 2002.

Effective date: April 22, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–150; Unit 2–150.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 930). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 13, 2001, and supplemental letter dated March 14, 2002.

Brief description of amendments: The amendments revise TS Section 5.5.9, ''Steam Generator Tube Surveillance Program,'' to allow the extension of the steam generator tube W star (W*) alternate repair criteria (ARC) through Cycles 12 and 13. This extension will allow the licensee additional time to validate the W* leak rate model through performance of additional in-situ pressure testing of W* indications.

Date of issuance: April 29, 2002.

Effective date: April 29, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–151; Unit 2–151.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55021). The March 14, 2002, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: February 13, 2002.

Brief description of amendments: The amendments revise the Technical Specification Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 23, 2002.

Effective date: April 23, 2002, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–186; Unit 3–177.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12605). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: March 21, 2001, as supplemented by letters dated October 24, 2001 and March 14, 2002.

Brief description of amendments: The amendments revise TS 5.5.2.12, ''Ventilation Filter Testing Program.'' Specifically, the reference to the American Society of Mechanical Engineers (ASME) Code N510–1989 was changed to the American National Standards Institute Standard N510–1975. This change was requested to

ensure the clarity of the methodology used to test the Control Room Emergency Air Cleanup System and Post-Accident Cleanup Filter System High Efficiency Particulate Air (HEPA) filters. Although the test methodology is slightly different than that in N510–1989, the acceptance criteria are the same. Also, in Subsection 5.5.2.12.d the references to Regulatory Guide (RG) 1.52, Revision 2, and ASME N510–1989 were deleted. This section is concerned with pressure drop testing across HEPA filters.

Date of issuance: April 30, 2002.

Effective date: April 30, 2002, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—187; Unit 3—178.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7421). The March 14, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 5, 2001.

Brief Description of amendments: The amendments revise Technical Specifications (TS) Surveillance Requirement 3.4.14.1 to clarify the frequency of performance with regard to Reactor Coolant System Pressure Isolation Valves in the Residual Heat Removal System flow path. Also, related TS Bases and editorial changes are part of this TS change.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 155/147.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55025). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 19, 2001, as supplemented by letter dated March 11, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to state that a representative sample of reactor instrumentation excess flow check valves (EFCVs) will be tested every 18 months such that each EFCV will be tested at least once every 10 years. Prior to issuance of these amendments; the EFCVs were required to be tested every 18 months.

Date of issuance: April 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 230/171.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 4, 2001 (66 FR 57125). The supplement dated March 11, 2002, provided clarifying information that did not change the scope of the September 19, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 27, 2001, as supplemented by letter dated January 23, 2002.

Brief description of amendments: The amendments revise the frequency for Surveillance Requirement (SR) 3.8.1.13 from once every 18 months (with a maximum of 22.5 months including the 25% grace period of SR 3.0.2) to once every 24 months (for a maximum of 30 months including the 25% grace period of SR 3.0.2). The change allows this SR to be performed following the diesel generator inspection/maintenance, which is performed at a 24-month interval in accordance with the manufacturer's recommendations.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 126, 104.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38767). The supplement dated January 23, 2002, provided clarifying information and reduced the scope of the June 27, 2001, application, but did not change the initial proposed no significant hazards consideration determination for this approval.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: August 17, 2001 (TS–366).

Brief description of amendments: The amendments removed the low-scram pilot air header pressure switches.

Date of issuance: April 8, 2002.

Effective date: As of date of issuance, to be implemented within 120 days following completion of the Unit 2 Cycle 12 refueling outage scheduled for the spring 2003, and the Unit 3 Cycle 10 refueling outage scheduled for the spring 2002.

Amendment Nos.: 276 and 235.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57126). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2001, as supplemented March 11, 2002.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) and the facility operating licenses (FOLs) to reflect an increase in the authorized maximum steady-state core power levels at the

Sequoyah Nuclear Plant, Units 1 and 2, from 3411 megawatts thermal (MWt) to 3455 MWt, an increase of approximately 1.3 percent.

Date of issuance: April 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days for Unit 1 and 120 days for Region 2.

Amendment Nos.: 275 and 264.

Facility Operating License No. DPR–79: Amendment revises the TSs and FOLs.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64303). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of May 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11871 Filed 5–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45898; File No. SR–Amex–2001–47]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the American Stock Exchange LLC Relating to Issuer Listing Standards and Procedures

May 8, 2002.

I. Introduction

On July 16, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex's issuer listing standards and procedures. On January 10, 2002, the Amex filed Amendment No. 1 to the proposed rule change,[3] and on February 14, 2002, filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on February 22, 2002.[5] The Commission received two comment letters on the proposal.[6] On May 2, 2002, the Amex submitted Amendment No. 3 to the proposed rule change.[7] This Order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 3 to the proposal.

II. Description of the Proposal

The Exchange is proposing to amend the Amex *Company Guide* to adopt (i) new listing standards relating to the authority of the Amex Committee on Securities in respect of its review of initial listings; (ii) new procedures that would impose definitive time limits with respect to how long a non-compliant company can retain its listing; (iii) substantive revisions to the initial and continued listing standards; and (iv) changes to the appeal procedures applicable to staff denials of initial listing applications and staff delisting determinations.[8]

The Exchange represents that it has also augmented its management reporting system to alert senior Exchange management to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. The management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards.

A. Initial Listing Approval Process

With regard to its initial listing standards, the Exchange is proposing the following:

(1) Replace all references to listing ''guidelines'' with references to listing ''standards.'' [9]

(2) Revise and clarify the authority of Listing Qualifications Department management to approve a company for initial listing, to provide that it may approve a company under the following circumstances:[10]

- The company satisfies new ''Initial Listing Standard 1'' (existing ''Regular Listing Guidelines'').
- The company satisfies new ''Initial Listing Standard 2'' (existing ''Alternate Listing Guidelines'').
- The company satisfies new ''Initial Listing Standard 3'' (new ''Market Capitalization'' standard).[11]

(3) Adopt new quantitative alternative minimum listing standards limiting the authority of Amex Committee on Securities (''Committee'') panels with respect to the review of initial listings determinations, such that a Committee panel would be able to approve a company that did not satisfy one of the regular initial listing standards only if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 9, 2002 (''Amendment No. 1''). Amendment No. 1 supercedes and replaces the original Exchange Act Rule 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission dated February 13, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected various typographical errors, elaborated on the augmentation of its management reporting system, clarified the procedures by which an issuer would be considered under the Alternative Listing Standards, and added rule language that had been inadvertently omitted.

[5] *See* Securities Exchange Act Release No. 45451 (February 14, 2002), 67 FR 8326.

[6] The comment letters are more fully discussed below in Section III. *See* Letter from Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Jonathan G. Katz, Secretary, Commission, dated March 28, 2002 (PA Letter); and Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan Katz, Secretary, Commission, dated March 27, 2002 (Nasdaq Letter).

[7] *See* letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2002. In Amendment No. 3, the Exchange withdrew proposed section 101(d) of the Amex *Company Guide* and designated proposed section 101(e) of the Amex Company Guide as section 101(d).

[8] *See generally, Securities Regulation: Improvements Needed in the Amex Listing Program* (GAO–02–18, November 27, 2001).

[9] This change would also apply to references to current continued listing guidelines.

[10] The Amex had originally also proposed a new ''currently listed securities'' standard, by which securities that are currently listed on either the New York Stock Exchange, Inc. or Nasdaq National Market would qualify for initial listing if such securities satisfy the standards with respect to continued listing set forth in Part 10 of the *Company Guide.* In Amendment No. 3, however, the Amex withdrew the ''currently listed securities'' standard. *See* Section III, *infra.*

[11] Under the ''market capitalization'' standard, a company would be eligible for initial listing if it meets the following standards: (1) Shareholders' equity of $4 million; (2) total value of market capitalization of $50 million; (3) market value of public float of $15 million; and (4) a minimum public float of 500,000 and 800 public shareholders; or a minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders; or a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders, and daily trading volume of 2,000 shares or more for the six months preceding the date of application.

(a) the company satisfies new alternative quantitative listing standards; (b) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (c) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards. Committee panels would not have the authority to approve companies below the ''floor'' established by the new alternative quantitative listing standards specified in section 1203(c).

B. Continued Listing Process

The Exchange is proposing to adopt revised procedures that would impose definitive time limits with respect to how long a company that has fallen below the continued listing standards can remain listed pending corrective action. Under the new procedures, a company that falls out of compliance with the continued listing standards will be given an opportunity to submit a business plan to the Listing Qualifications Department detailing the action it proposes to take to bring it into compliance with continued listing standards within 18 months. If the Listing Qualification Department management determines that the company has made a reasonable demonstration of an ability to regain compliance within 18 months, the plan will be accepted. The company would be able to continue its listing for up to 18 months if it issues a press release indicating that it is not in compliance with the continued listing standard and that it has been granted an 18-month extension.

The Listing Qualifications Department will closely monitor the company's compliance with the plan during the 18-month plan period, and the company will be subject to delisting if it does not show progress consistent with its business plan, if further deterioration occurs, or based on public interest concerns. If, prior to the end of the 18-month plan period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange will deem the 18-month plan period over. At the conclusion of the 18-month plan period, the staff will initiate delisting proceedings if the company has not regained compliance with the continued listing standards.

If the company, within twelve months of the end of the 18-month plan period (including any early termination of the 18-month plan period), is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include immediately initiating delisting procedures.[12] All staff delisting proceedings can be appealed to a Committee panel; however, the Committee panel will not have the authority to continue the company's listing unless it determines that the company has regained compliance with the continued listing standards.

C. Other Changes

With respect to continued listing, the Amex is proposing to revise section 1003(a)(iii) of the *Company Guide* to provide that a company will continue to qualify for listing, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, if it has stockholders' equity of at least $6 million. Currently, a company that has sustained such losses is subject to delisting regardless of its stockholders' equity. The Amex believes that this change is appropriate, in that a company which is able to maintain significant shareholders' equity should be able to continue its listing notwithstanding five or more years of losses. The Amex notes that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

In addition, the Amex is proposing to modify the market value of public float continued listing standard contained in section 1003(b)(i)(C) of the *Company Guide*, to provide that a company will not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than $1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below $1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

D. Appeal Procedures

The proposed changes make adjustments to the procedures applicable to the review of initial listing determinations and revise the procedures applicable to the review of delisting determinations to conform them to initial listing procedures. The proposal provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.

A panel decision will be dispositive with respect to both listing and delisting decisions. In the case of an appeal of an initial listing denial, this means that if the panel determines to ''reverse'' the staff determination, the issuer's securities will be approved for listing and listed at the convenience of the issuer. In the case of an appeal of a delisting determination, the delisting action will be stayed pending the outcome of the panel's review. Following a panel determination to delist, trading in the company's securities will be suspended. If the company does not appeal the panel's decision to the full Committee, its securities will be delisted following the expiration of the appeal period, in accordance with section 12 of the Act [13] and the rules promulgated thereunder. If the company does appeal to the full Committee, the suspension will continue until there is a final decision (either by the full Committee or the Board based on its ''call for review''), in which case the securities will be either delisted or the suspension will be lifted, depending on the outcome.

With respect to an initial listing application in which the company appeals an adverse panel decision to the full Committee, if the Committee ''reverses'' the panel decision and approves the listing, in order to avoid potential market disruptions and investor confusion, the securities will not begin trading unless and until the

[12] The Exchange represents that it does not view the one-year probation period as an extension of the 18-month plan period. Telephone discussion between Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 14, 2002). The Commission agrees and emphasizes in particular that companies listed pursuant to the new alternative listing standards in section 1203(c) of the *Company Guide* should not view the one-year probation period as an opportunity to gain additional time to achieve compliance. Absent extraordinary circumstances, the Commission expects the Exchange to suspend and institute delisting proceedings for the security of any section 1203(c) company that falls below the section 1203(c) criteria during the one-year probation period.

[13] 15 U.S.C. 78*l*.

Board has declined to call such decision for review.

While issuers will be able to request either an oral or written hearing at the panel level, appeals to the full Committee will be based on the written record only unless the Committee determines, in its sole discretion, to hold a hearing. All decisions of the full Committee will also be subject to a discretionary ''call for review'' by the Amex Board of Governors. If the Board's decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to section 1204(d), and an application will be submitted by the Exchange staff to the Commission to strike the security or securities from listing and registration in accordance with section 12 of the Act [14] and the rules promulgated thereunder. In the event that the Board was to ''reverse'' a full Committee decision, the issuer's listing status would be adjusted accordingly.

Additionally, in order to recoup the costs associated with processing and conducting hearings in connection with issuer requests for review, the Amex will continue to charge a fee of $2,500 for an oral hearing and $1,500 for a written review. Thus, an issuer requesting an oral hearing before a panel will be assessed a fee of $2,500, while an issuer requesting a written review by a panel will be assessed a fee of $1,500. Should the issuer appeal the panel's decision to the full Committee, it will be assessed an additional fee of $2,500. Issuers will not be charged fees in connection with a ''call for review'' by the Board of Governors.

III. Comments and Response

A. Comment Letters

The Commission received two comment letters regarding the proposal.[15] Both commenters generally believed that the ''currently listed securities'' standard proposed in section 101(d) of the *Company Guide* is contrary to section 18 of the Securities Act of 1933 (''Securities Act'').[16] The commenters expressed the concern that the ''currently listed securities'' standards would allow a company listed on either Nasdaq's National Market or the New York Stock Exchange to be approved for listing on Amex based solely upon that company's compliance with Amex's lower continued listing standards (rather than Amex's higher initial listing standards).

B. Amex Response

In Amendment No. 3, the Amex withdrew proposed section 101(d) of the *Company Guide* (''currently listed securities'' standard) and designated proposed section 101(e) of the *Company Guide* as section 101(d).[17] Notwithstanding the amendment, the Amex stated that it continues to believe strongly that their originally proposed changes to section 101(d) are fully consistent with section 18 of the Securities Act.[18] The Amex represented that the provision would have provided a narrow and limited window for the securities of issuers currently listed on a marketplace that has been afforded the section 18 ''blue-sky'' exemption to transfer to another section 18 marketplace. These issuers must have previously satisfied the initial listing standards of such marketplace and must have been in compliance with applicable Amex initial listing standards at the time of initial listing. The Amex maintained that the ultimate beneficiaries of the proposed ''currently listed securities'' standard would have been the shareholders of the issues in question.

IV. Discussion

The Commission has reviewed the Amex's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of section 6 of the Act [19] and the rules and regulations promulgated thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[20] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

At the outset, the Commission believes that the adoption of firm quantitative standards enhances the transparency of the Amex's listing program and provides clarity to investors. Investors are likely to assume that the companies listed on Amex meet the Exchange's listing standards, and the proposed amendments recognize that practicality. The *Company Guide* provides that the Amex staff may approve a company for initial listing if the company satisfies clearly delineated standards. The Amex Committee on Securities (''Committee'') would be able to approve a company that did not satisfy one of the regular initial listing standards only if (i) the company satisfies new alternative quantitative listing standards; (ii) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (iii) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards.[21] The Commission notes that Committee panels would not have authority to approve companies below the ''floor'' established by the new alternative quantitative listing standards.

With respect to continued listing, the Commission believes that the revision to section 1003(a)(iii), to provide that a company will continue to qualify for listing if it has stockholders' equity of at least $6 million, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, is reasonable. In its experience, the Amex has noted that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the Amex believes that the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

The Commission similarly believes that the revision to section 1003(b)(i)(C), to modify the market value of public float continued listing standard, is reasonable. The Amex is proposing that a company not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than $1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below $1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

The Commission also believes that the modifications to the Exchange's continued listing program and appeal procedures under Parts 10 and 12 of the Amex *Company Guide* strike a

[14] *Id.*

[15] *See* PA Letter, Nasdaq Letter, *supra* at note 6.

[16] 15 U.S.C. 77r.

[17] *See* Amendment No. 3, *supra* at note 7.

[18] 15 U.S.C. 77r.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] Amex *Company Guide*, Section 1203(c).

permissible balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing greater transparency to the 18-month plan process and sustaining investor confidence in the integrity of the markets. The Commission believes that the proposed changes to the appeals process are reasonable and afford adequate due process to issuers while at the same time bringing increased efficiency to the listing and delisting processes.[22] Among other things, the process provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.[23] All decisions of the full Committee will also be subject to a discretionary ''call for review'' by the Amex Board of Governors.[24]

Finally, the Commission believes that changes to the Amex management reporting process will help to protect investors and the public interest. The Amex represents that it has augmented its management reporting system to ensure that senior Exchange management is regularly alerted to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. In addition, Amex states that the management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards. The Amex believes that this comparison will enable the staff to provide feedback to the Committee and the Board of Governors as to the effectiveness of the Amex listing standards.

[22] For example, the Committee will now follow the same review process for both listing and delisting determinations, rather than different processes for each. In addition, the Amex notes the the Committee, which has extensive experience and expertise in evaluating listing issues, will be given greater responsibility with respect to listing determinations, while the Board, through its ''call for review'' rights, will retain ultimate oversight of the listing and delisting process as well as of listing matters in general.

[23] Amex *Company Guide*, Sections 1203 and 1204.

[24] Amex *Company Guide*, Section 1206.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange withdrew proposed section 101(d), the ''currently listed securities'' standard, and designated proposed section 101(e) as section 101(d). As the changes to the proposal set forth in Amendment No. 3 are directly responsive to the concerns raised by the commenters, the Commission finds that, consistent with section 19(b)(2) of the Act,[25] good cause exists for approving Amendment No. 3 on an accelerated basis. The Commission notes that granting accelerated approval to Amendment No. 3 will allow the Amex to implement its issuer listing standards and procedures as soon as possible.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–47 and should be submitted by June 4, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–Amex–2001–47), as amended, is approved.

[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12010 Filed 5–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45892; File No. SR–CHX–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto by the Chicago Stock Exchange, Inc. Amending the Specialist Fee Schedule for Certain Nasdaq National Market Securities and Certain Tape B Issues

May 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to provide for wider application of a recently-enacted specialist fee exemption[4] in the case of certain modestly traded Nasdaq National Market (''NNM'') securities and certain modestly traded Tape B securities, securities listed for trading on the American Stock Exchange, Inc (''Amex''). The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

[27] 17 CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed on March 29, 2002. On April 26, 2002, the CHX amended the proposal. See Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2002) (''Amendment No. 1'').

[4] See Securities Exchange Act Release No. 45661 (March 27, 2002), 67 FR 16481 (April 5, 2002).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Schedule to provide wider application of a recently-enacted specialist fee exemption in the case of certain modestly traded NNM securities and certain modestly traded Tape B securities. Specifically, the proposed changes to the Schedule would modify the definition of ''Exemption Eligible Securities,'' [5] which are exempt from otherwise applicable CHX fixed fees, assignment fees, and application fees.

As set forth in the Exchange's recently-enacted specialist fee exemption, the Exchange believes that the fee exemption constitutes an appropriate means of ensuring that the Exchange continues to trade an appropriate number of modestly traded securities. For a variety of reasons, some specialists have deregistered from certain issues formerly assigned to such specialists for trading on the CHX pursuant to unlisted trading privileges. At the same time, CHX floor brokers continue to receive orders for many of these ''dropped'' issues; such floor brokers view continued CHX trading of a wide variety of issues to be critical to their customers and an important part of the Exchange's overall strategic plan. Accordingly, the CHX has devised the proposed fee exemption, which the CHX believes will provide sufficient economic incentive for specialists to continue trading a wide array of issues.

Following one month's review and analysis of the effect of the recently-enacted fee exemption, the Exchange has determined that it is appropriate to expand the definition of ''Exemption Eligible Securities'' to include NNM securities with average daily volume of up to 1000 trades in the Nasdaq marketplace, as well as Tape B issues with average daily volume of up to 400 trades in the national market system.

The Exchange anticipates that by expanding the scope of issues to which the exemption applies, the Exchange will provide the intended incentive for firms to continue trading issues that might otherwise be ''dropped'' from trading at the CHX.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] generally, and Section 6(b)(4) of the Act [7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(2) thereunder,[9] as establishing or changing a due, fee, or other charge paid solely by members of the CHX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX–2002–08 and should be submitted by June 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11950 Filed 5–13–02; 8:45 am]

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[5] Under the proposed rule change to the Schedule, ''Exemption Eligible Security'' would include either of the following categories of issues:

(a) any NNM security, which averages fewer than 1000 trades per day that are reported to the consolidated tape on an average daily basis during the applicable three-month measuring period. In the case of an NNM security assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of an NNM security that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any NNM security that has had trades reported to the consolidated tape for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

(b) any Tape B issue, which averages fewer than 400 trades per day in the national market system on an average daily basis during the applicable three-month measuring period. In the case of a Tape B issue assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of a Tape B issue that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any Tape B issue that has been traded in the national market system for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(2).

[10] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45881; File No. SR–MSRB–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Electronic Mail Contacts

May 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on April 30, 2002, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–05). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change relating to electronic mail representatives. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–40. Electronic Mail Contacts

(a) Each broker, dealer or municipal securities dealer shall appoint an Electronic Mail Contact to serve as the official contact person for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB. Each Electronic Mail Contact shall be a registered municipal securities principal of the broker, dealer or municipal securities dealer.

(b)(i) Upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, each broker, dealer or municipal securities dealer shall submit to the MSRB by mail a completed Form G–40 setting forth, in the prescribed format, the following information:

(A) The name of the broker, dealer or municipal securities dealer, and the date.

(B) The MSRB Registration Number of the broker, dealer or municipal securities dealer.

(C) The name of the Electronic Mail Contact, and his/her electronic mail address, telephone number and Individual Central Registration Depository (CRD) Number.

(A) The name, title, signature and telephone number of the person who prepared the form.

(ii) A broker, dealer or municipal securities dealer may change the name of its Electronic Mail Contact or other information previously provided by electronically submitting to the MSRB an amended Form G–40.

(c) Each broker, dealer or municipal securities dealer shall update information on its Electronic Mail Contact periodically as requested and prescribed by the MSRB and shall submit such information electronically to the MSRB.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xxi) No change.

(xxii) Records Concerning Electronic Mail Contacts. Records reflecting copies of Form G–40 and any amended forms, as required by Rule G–40.

(b)–(e) No change.

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of the rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); and paragraphs (a)(ix) through (a)[(xxi)] *(xxii)* shall in any event be maintained.

(g) No change.

Rule G–9. Preservation of Records

(a) No change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less that three years:

(i)–(xiii) No change.

(xiv) the records to be maintained pursuant to rule G–8(a)(xx); [and]

(xv) the records to be maintained pursuant to rule G–8(a)(xxi)[.] *;and*

(xvi) *the records to be maintained pursuant to rule G–8(a)(xxii).*

(c)–(g) No change.

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II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The events of September 11th, as well as the weeks that followed, emphasized the importance of, and need for, a formalized business continuity plan that includes an efficient and reliable means of official communication between regulators and the industry. Establishing a reliable method for electronic communication is needed to allow the MSRB to efficiently alert dealers to official communications, including time-sensitive developments, rule changes, notices, etc., and will facilitate dealers' internal distribution of such information. In addition, the MSRB has discontinued publication of *MSRB Reports.* MSRB notices now will be available exclusively on its Web site at *www.msrb.org.* To ensure that such notices and other MSRB communications continue to reach each broker, dealer and municipal securities dealer, the MSRB has adopted the proposed rule change to add new Rule G–40, on electronic mail contacts.

Paragraph (a) of Rule G–40 requires that each dealer appoint an ''Electronic Mail Contact'' to serve as its official contact person for purposes of communicating with the MSRB, and that such person be a registered municipal securities principal of the dealer. Paragraph (b) requires that each dealer, upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number,[2] submit by

[1] 15 U.S.C. 78s(b)(1).

[2] Rule A–12, on initial fee, requires each dealer, prior to effecting any transaction in or inducing or attempting to induce the purchase or sale of any municipal security, to pay to the MSRB an initial fee of $100, accompanied by a written statement setting forth the dealer's name, address and SEC registration number.

Upon Commission approval of the proposed rule change, the MSRB will contact its current list of dealers (since these dealers will have previously satisfied their Rule A–12 submissions) to obtain completed Forms G–40. Thereafter, any new dealer will be required to send its initial Form G–40 by

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mail to the MSRB a completed Form G–40 setting forth the dealer's name, date, MSRB Registration Number, name of its E-mail Contact and his/her e-mail address, telephone number and Individual Central Registration Depository (CRD) Number, and the name, title, signature and telephone number of the person who prepared the Form G–40.[3] Paragraph (b) also provides that the dealer may change its E-mail Contact or other information previously submitted by sending an amended Form G–40 to the MSRB by e-mail. Paragraph (c) requires each dealer to update information on its E-mail Contact as periodically requested and prescribed by the MSRB and to submit such information to the MSRB by e-mail.

The proposed rule change also amends Rule G–8, on books and records, to require that dealers maintain records reflecting copies of Form G–40 and any amended forms, as required by Rule G–40. The proposed rule change amends Rule G–9, on preservation of records, to require that dealers retain these records for a period of three years.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–05 and should be submitted by June 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11951 Filed 5–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45882; File No. SR–MSRB–2002–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Professional Qualifications of Municipal Fund Securities Limited Principals

May 6, 2002.

On March 21, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to professional qualifications of municipal fund securities limited principals.

The Commission published the proposed rule change for comment in the **Federal Register** on March 26, 2002.[3] The Commission received two comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The MSRB proposed rule change consists of an amendment to Rule G–3, on professional qualifications, to address a new category of principals that serve permanently as municipal fund securities limited principals. Under MSRB Rule G–3, which governs professional qualifications, a broker, dealer or municipal securities dealer (''dealer'') must have at least one municipal securities principal (and in some cases two municipal securities principals), even if the dealer's only municipal securities transactions are sales of municipal fund securities.[4] In July 2001, MSRB amended Rule G–3 to provide a temporary alternative method for qualification of principals in connection with municipal fund securities.[5] The amended rule provided relief to small dealers seeking to enter the market for municipal fund securities from Rule G–3's requirement to immediately obtain a municipal securities principal. Under the temporary provision, until July 31, 2002, if a dealer's municipal securities activities are limited exclusively to municipal fund securities and the dealer has fewer than eleven associated persons engaged in such activities, the dealer may fulfill its obligation to have a municipal securities principal by designating a general securities or investment company/variable contracts limited principal to act as a limited

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mail when the dealer completes its Rule A–12 submissions, as noted above.

[3] The MSRB will assign passwords in order to limit access to each dealer's Form G–40 and to maintain the integrity of the information contained therein. Therefore, each dealer will be required to submit its initial Form G–40 by mail. The MSRB will then issue a password to the designated E-mail Contact that will be used to electronically submit to the MSRB any required updates and amendments to the form.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45652 (April 3, 2002), 67 FR 15844.

[4] A municipal fund security is defined in MSRB's Rule D–12 as a municipal security issued by an issuer that, but for section 2(b) of the Investment Company Act of 1940 (the ''Investment Company Act''), would constitute an investment company within the meaning of the Investment Company Act. Section 2(b) exempts states and political subdivisions, and agencies, authorities, and instrumentalities thereof, from the Investment Company Act.

[5] *See* SR–MSRB 2001–05; Release No. 34–44584 (July 23, 2001), 66 FR 39541 (July 31, 2001).

principal.[6] During this period, any designated limited principal has all of the powers and responsibilities of a municipal securities principal under MSRB rules with respect to transactions in municipal fund securities. Under the current transition provision, on and after August 1, 2002, dealers effecting transactions in municipal fund securities are required to comply with the same municipal securities principal requirements applicable to all other dealers effecting transactions in municipal securities.

The MSRB acknowledges that many dealers that wish to participate in the market for municipal fund securities do not currently, and do not plan to, engage in any municipal securities activities other than with respect to municipal fund securities. Since these dealers will not participate in the market for municipal debt securities and the features of municipal fund securities differ significantly from those of debt securities, the MSRB believes that no investor protection purpose is served by requiring principals responsible for supervision of such firms' municipal fund securities activities to demonstrate their understanding of the application of MSRB rules other than with respect to municipal fund securities.

To qualify as a municipal fund securities limited principal would be by means of an examination consisting of questions on the broad range of MSRB-specific topics that are relevant to municipal fund securities activities.[7] The examination would require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26) administered by the National Association of Securities Dealers, Inc. (''NASD''). The qualification examination for municipal fund securities limited principals is scheduled to become available on October 1, 2002. MSRB staff is currently in the process of developing the qualification examination and will file the study outline and specifications with the Commission under separate cover.

An individual qualified as a municipal fund securities limited principal would be permitted to supervise only the municipal fund securities activities of the dealer and would have no authority to supervise the activities of the dealer with respect to any other type of municipal securities. However, an individual qualified as a municipal securities principal (Series 53) would continue to be qualified to supervise all municipal securities activities of the dealer, including activities relating to municipal fund securities.[8] Thus, an individual wishing to supervise municipal fund securities activities could qualify to do so either by becoming: (i) a municipal securities principal through the municipal securities principal qualification examination (Series 53) or (ii) a municipal fund securities limited principal through this new qualification examination if the individual is already or concurrently becomes a general securities principal or investment company/variable contracts limited principal.

If a dealer's municipal securities activities are limited to municipal fund securities, the proposed rule change also would count all municipal fund securities limited principals toward the numerical requirement for principals regardless of the number of associated persons engaging in such activities. Thus, any dealer that does not engage in any municipal securities activities other than with respect to municipal fund securities could fully discharge its obligation with respect to municipal securities principals with individuals qualified as municipal fund securities limited principals.

Further, existing rule language indirectly permits investment company/variable contracts limited representatives (Series 6) to take the Series 53 examination to become qualified as municipal securities principals.[9] Although this was appropriate when there was no other provision under Rule G–3 for qualifying a principal to supervise municipal fund securities activities, the proposed rule change discontinues this method of qualification on October 1, 2002 when the new municipal fund securities limited principal qualification examination becomes available.[10] An investment company/variable contracts limited representative would be able to qualify as a municipal fund securities limited principal by taking both the Series 26 examination and the new municipal fund securities limited principal examination.

In addition, the proposed rule change extends the existing temporary provision permitting general securities principals and investment company/variable contracts limited principals to supervise municipal fund securities activities from July 31, 2002 to December 31, 2002 in order to provide dealers with an adequate opportunity to prepare potential candidates for the new examination. During the extended transition period, the numerical requirement with respect to principals would be simplified so that all dealers, not just those with fewer than eleven associated persons engaged in municipal fund securities activities, could fully meet their principal requirements with principals acting in the temporary capacity permitted under the transition provisions. This rule change makes clear that, beginning on January 1, 2003, all municipal fund securities limited principals (including general securities principals and investment company/variable contracts limited principals supervising municipal fund securities activities under the temporary transition period who wish to continue such supervisory activities after December 31, 2002) must be qualified by taking the new qualification examination.

Finally, the MSRB rule change provides the NASD or any other appropriate regulatory agency the power to waive qualification requirements with respect to municipal fund

[6] Dealers that have 11 or more associated persons engaged in municipal fund securities activities may also designate a general securities or investment company/variable contracts limited principal to act as a limited principal. If a dealer is required to have two municipal securities principals under Rule G–3(b)(iii), then it may count one such limited principal toward this numerical requirement but must still have one municipal securities principal qualified other than by reason of being a general securities or investment company/variable contracts limited principal. If any dealer having 11 or more associated persons engaged in municipal fund securities activities is permitted to have only one municipal securities principal by virtue of Rule G–3(b)(iii)(A), the numerical requirement may not be satisfied by designation of a limited principal.

[7] Since the qualification examination would be tailored specifically to the application of MSRB rules to municipal fund securities, rather than to all types of municipal securities, the MSRB expects that this examination would not be as lengthy as the existing qualification examination for municipal securities principals (Series 53).

[8] The question bank for the Series 53 examination includes questions relating to municipal fund securities. Individuals taking the Series 53 examination must therefore become familiar with the application of MSRB rules to municipal fund securities.

[9] Rule G–3 permits an investment company/variable contracts representative to act as a municipal securities representative solely with respect to municipal fund securities.

[10] Qualification of an investment company/variable contracts limited representative as a full municipal securities principal allows that individual to supervise any municipal securities activities, including debt securities. The MSRB is concerned that an individual who is solely qualified as an investment company/variable contracts limited representative prior to becoming a municipal securities principal may not have an adequate understanding of municipal debt securities to provide effective supervision under all circumstances.

securities limited principals, as with all other qualification categories. Under Rule G–3(g)(i), such waivers are to be granted solely in extraordinary cases.

II. Summary of Comments

The Commission received two comment letters on the proposal.[11] Of the two comment letters, one expresses support and the other opposes the creation of a municipal fund securities limited principal.

In favor of the MSRB proposal, the ICI letter states that the new classification of limited principals will provide ''needed relief'' to firms whose sole securities business consists of municipal fund securities.[12] ICI referenced its recommendation submitted in prior letter, commenting on the MSRB's July 2001 notice, that the MSRB provide temporary and extended relief until the MSRB administers its new municipal fund securities limited principal examination.[13] Because their concern is addressed in the proposed rule change, the ICI extends its support to the MSRB.

The comment letter sent by Federated opposes the MSRB's establishment of the new permanent category of municipal fund securities limited principals by stating that it creates ''unnecessary and inappropriate burdens''.[14] Federated asserts that the existing requirements already assure the proper supervision for municipal fund securities, because there is ''virtually no substantive distinction between municipal fund securities and mutual funds''. The imposition of new MSRB regulation burdens member firms with unnecessary registration requirements, additional costs and administrative encumbrances without adding investor protections.[15] As an alternative, the Federated letter supports supervision of the municipal fund securities under the current registration and continuing education scheme of the NASD. To the extent it is necessary, the letter requests that the MSRB work with the NASD to incorporate changes to the NASD's educational scheme that address municipal fund securities. Additionally, the Federated letter urges the MSRB to extend its current pilot to permit NASD mutual fund principals to supervise sales of municipals fund securities.[16]

The MSRB believes that the proposed rule change would in fact decrease dealers' regulatory burden. Without the amendment, dealers would be required to use fully qualified municipal securities principals to meet their Rule G–3 principal requirement.[17] As stated above, the creation of the municipal fund securities limited principal category provides dealers with an alternative means of meeting this requirement. For dealers that do not otherwise engage in municipal securities activities, allowing their general securities principals or investment company principals to take a shorter, more focused examination than the Series 53 exam in order to qualify as a municipal fund securities principal should be less burdensome. The further reduction in regulatory burden that these commentators most likely desire—*i.e.,* no MSRB qualification requirements—is inappropriate since activities regulated by MSRB rules require ultimate supervision by someone who knows these rules.

III. Discussion

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which require that no municipal securities broker or municipal securities dealer shall effect any transaction in municipal securities unless, ''such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.'' [18]

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act, the rule and regulations thereunder, which govern the MSRB.[19] The language of section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[20]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G–3, on professional qualifications, which relates to municipal fund securities limited principals, meets the statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Exchange Act, set forth above.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[21] that the proposed rule change (File No. SR–MSRB–2002–03) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11952 Filed 5–13–02; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* letter from John K. Forst, Law Offices of Dechert Price & Rhoads, to Jonathan G. Katz, Secretary, Commission, dated April 30, 2002 (*enclosing* letter from James F. Getz, President, Federated Securities Corp. (''Federated''), to Mr. Jonathan G. Katz, Secretary, Commission); letter from Tamara K. Reed, Associate Counsel, Investment Company Institute (''ICI''), to Mr. Jonathan G. Katz, Secretary, Commission, dated April 25, 2002.

[12] *See* ICI letter, note 11, *supra.*

[13] *Id.* (*citing* letter from Tamara K. Reed, Associate Counsel, ICI, to Ernesto A. Lanza, Esquire, MSRB, dated January 15, 2002.)

[14] *See* Federated letter, note 11, *supra.*

[15] *Id.*

[16] *Id.*

[17] Dealers selling mutual fund IRA accounts and muniicipal bond mutual funds are not required to comply with MSRB rules because these securities are not municipal securities and are instead subject to regulation under other regulatory schemes. In contrast, municipal fund securities are municipal securities and therefore are subject to MSRB rules and exempt from most other provisions of federal securities laws (such as the Securities Act of 1933 and the Investment Company Act).

[18] 15 U.S.C. 78o–4(b)(2)(A).

[19] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78o–4(b)(2)(C).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1539).

TIME AND DATE: 9 a.m. (CDT), May 16, 2002.

PLACE: Huntsville Marriott, 5 Tranquility Base, Huntsville, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 26, 2002.

New Business

B—Purchase Awards

B1. Supplement to contract with EMC Corporation for disk array storage device hardware, software, and maintenance.

B2. Contracts with Great Southern Wood Preserving, Inc., Landstar, and Kaplan Trucking for purchase of truckload transportation services for TVA operations.

C—Energy

C1. Extended operation of Browns Ferry Nuclear Plant and recovery of Unit 1.

C2. Contracts with Flowserve Corporation and Tencarva Machinery Company, Inc., for pump repair parts and repair services at any TVA fossil plant.

C3. Contract with Trans-Ash, Inc., for offsite fly ash utilization at Johnsonville Fossil Plant.

C4. Term coal contract with The American Coal Sales Company for coal supply to Johnsonville Fossil Plant.

C5. Contract with United Conveyor Corporation to design and furnish mechanical ash-handling systems for any TVA fossil plant

C6. Supplement to Contract No. 2889 with LaRoche Industries, Inc., to engineer and design ammonia storage and supply facilities and to supply ammonia for the nitrogen oxide reduction programs for any TVA fossil plant.

E—Real Property Transactions

E1. Sale of a noncommercial, nonexclusive permanent easement to John Jansheski for construction and maintenance of recreational water-use facilities affecting approximately 0.27 acre of Tellico Reservoir shoreline in Loudon County, Tennessee (Tract No. XTELR–228RE).

E2. Abandonment of certain easement rights and modificatioin of a restrictive covenant to allow Windel and Kermit Lester to develop their land for residential purposes affecting approximately 1.1 acres of land on South Holston Reservoir (a portion of Tract Nos. SH–584F and SH–585F) in Washington County, Virginia.

E3. Grant of a permanent easement, without charge, except for payment of TVA's administrative costs, to the Fort Loudoun Electric Cooperative, for an electrical transmission line and substation affecting approximately 3.3 acres of land on Tellico Reservoir in Monroe County, Tennessee (Tract No. XTTELR–40SS).

E4. Modification of a restrictive covenant, at the request of the Tennessee Wildlife Resources Agency, without charge, except for payment of TVA's administrative costs, affecting approximately 0.30 acre of former TVA land on Fort Patrick Henry Reservoir (portion of Tract No. XTFHR–2) in Sullivan County, Tennessee.

E5. Grant of a 30-year term public recreation easement, with a conditional option for renewals, without charge, except for payment of TVA's administrative costs, to the city of Loudon, Tennessee, affecting approximately 11 acres of land on Watts Bar Reservoir in Loudon County, Tennessee (Tract No. XTWBR–143RE).

E6. Grant of a 30-year term public recreation easement, with a conditional option for renewals, without charge, except for payment of TVA's administrative costs, to the town of Murphy, North Carolina, affecting approximately 22.5 acres of land on Hiwassee Reservoir in Cherokee County, North Carolina (Tract No. XTFBR–30RE).

E7. Grant of a permanent easement to the State of Tennessee Department of Transportation for highway and drainage system improvement purposes, without charge, except for payment of TVA's administrative costs, affecting approximately 1.2 acres of TVA land on Chickamauga Reservoir in Hamilton County, Tennessee (Tract No. XTCR–200H).

E8. Grant of permanent and temporary construction easements, without charge, except for payment of TVA's administrative costs, to the State of Tennessee Department of Transportation for highway and bridge improvement purposes affecting approximately 2.2 acres of land on the Saltillo Generation Plant site in Hardin County, Tennessee (Tract No. XSAGP–1H).

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. (CPGSSC–7 and CPGSSC–9, Center-Point Swamp Creek, Whitfield County, Georgia; and Tract No. MNHS–2, Madison-North Huntsville Transmission Line, Madison County, Alabama.

Information Items

1. Restatement and documentation of delegation of approval authorities to the President and Chief Operating Officer, or that officer's designated representative, for power purchase or sale agreements of up to two years in duration; for the purchase or resale of transmission service associated with such purchases or sales of power; and enabling, master, or service agreements associated with the aforementioned types of transactions.

2. Approval of a deed modification affecting approximately 37.6 acres of former TVA land on Guntersville Reservoir in Marshall County, Alabama (Tract No. XGR–13).

3. Approval of the filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. BWAC–58, Pleasant View-Ashland City Loop Into Ashland City; Tract Nos. CLWC–9 and CLWC–11, Maryland-Crossville Tap to West Crossville; Tract Nos. HCVB–36, HCVB–62A, and HCVB–63, Hanceville-Bremen; and Tract No. RSCP–133, Rock Springs-Center Point; and Tract No. SEM–34, Sturgis-Eupora Tap to Maben Transmission Line.

4. Approval of the filing of condemnation cases to acquire transmission line easements, rights-of-way, and right to enter effecting Tract No. CHMDMW–33, Cordova-Holly Springs Tap to Miller Substation Tap to DeSoto Road Substation Tap to Mineral Wells; Tract No. CPGSSC–12, Center Point-Swamp Creek; Tract Nos. 2PMNS–1000TE, 2PMNS–1001TE, 2PMNS–1002TE, Pickwick-Memphis Second Circuit Tap to North Selmer; and Tract No. WPSVT–1000TE, Wartrace Primary-Shelbyville Tap to Deason Transmission Line.

5. Approval of amendments to the provisions of the TVA Savings and Deferral Retirement 401(k) Plan.

6. Approval of the 2002 edition of the Transmission Service Guidelines and the rates for transmission service and ancillary services.

7. Approval of an agreement amending TVA's power contract with the Knoxville Utilities Board.

8. Approval of a three-year power purchase contract with Calpine Energy Services, L.P., and delegation of authority to the President and Chief Operating Officer, or a designated representative, to negotiate and execute a written definitive agreement for the transaction.

9. Concurrence in the issuance of up to $1 billion in TVA Power Bonds.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 9, 2002.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 02–12170 Filed 5–10–02; 2:58 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12224]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to the safety of navigation. The meetings are open to the public.

DATES: NAVSAC will meet on Thursday and Friday, June 6 and 7, 2002, from 8:30 a.m. to 5 p.m., and on Saturday, June 8, 2002, from 8 a.m. to 12 noon. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 31, 2002. Requests to have material distributed to each member of the Council prior to the meeting should reach the Executive Director of NAVSAC along with 25 copies of the material on or before May 24, 2002.

ADDRESSES: NAVSAC will meet at The Eastland Park Hotel, 157 High Street, Portland, ME 04101. Send written material and requests to make oral presentations to Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Maritime security update and member information exchange.

(2) Update on the Marine Transportation System (MTS) Initiative.

(3) Overview/Update on Navigation Technology.

(4) Towing Industry input to NAVSAC's Position on Barge Lighting.

(5) Status report on ballast water issues.

(6) Acceleration of Automatic Identification System (AIS) Implementation.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than May 31, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than May 31, 2002. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than May 24, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: May 2, 2002.

Jeffrey P. High,

Director of Waterways Management.

[FR Doc. 02–12026 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Emergency Review; Environmental Streamlining Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Emergency notice.

SUMMARY: The FHWA has submitted the following request for emergency processing of a public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. The collection involves surveying transportation and resource agencies involved in environmental streamlining in order to measure their performance. The information that is collected will be used to provide benchmarks for the agencies themselves and to focus on areas where process improvements can be made.

DATES: Please submit comments by May 24, 2002.

Comments: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Kreig Larson, 202–366–2056, Planning and Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Type of Request: New.

Title: Environmental Streamlining: Measuring the Performance of Stakeholders in the Transportation Project Development Process.

Background: The U.S. Department of Transportation (DOT), FHWA, has contracted with the Gallup Organization to conduct a survey of professionals associated with transportation and resource agencies in order to gather their views on the workings of the environmental review process for transportation projects and how the process can be streamlined.

The purpose of the survey is to: (1) Collect the perceptions of agency professionals involved in conducting the decisionmaking processes mandated by the National Environmental Policy Act (NEPA) and other resource protection laws in order to develop benchmark performance measures; and (2) identify where the performance of the process might be improved by the application of techniques for streamlining.

The survey is an essential aspect of one of the goals of the U.S. DOT's Strategic Plan, which is to ''Improve environmental decisionmaking processes in order to expedite surface transportation projects * * *'' The FHWA Administrator has designated Environmental Stewardship and Streamlining as one of the agency's ''Vital Few'' initiatives, meaning it is a goal to which the FHWA will focus its activities and efforts to meet the

mandate of Sec. 1309 (Environmental Streamlining) of the Transportation Equity Act for the 21st Century.

The FHWA has requested the emergency OMB approval by May 24, 2002, in order to respond promptly to the needs of Congress, and our partners, in addressing improvements to the environmental review process for transportation projects.

Respondents: Approximately 800 professionals/officials from state and local transportation and natural resource agencies.

Frequency: This is a one-time survey.

Estimated Burdens: Approximately 15 minutes average per respondent; the total estimated annual burden is 200 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 10, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02–12119 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Chisago County, Minnesota and Polk County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed transportation improvements in the Trunk Highway (TH) 8 corridor between Interstate 35 (I–35) to the west in Chisago County, Minnesota and the TH 8/Highway 35 intersection to the east in Polk County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Stan Thompson, Project Manager, Minnesota Department of Transportation—Metro Division, Waters Edge Building, 1500 West County Road B–2, Roseville, Minnesota 55113, Telephone (651) 582–1307; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT) and the Wisconsin Department of Transportation (Wis/DOT), will prepare an EIS on a proposal to provide safety, operational and capacity improvements to the TH 8 Corridor from I–35 to the west in Chisago County, Minnesota to the intersection of TH 8/Highway 35 to the east in Polk County, Wisconsin.

The proposed improvements could include capacity expansion on sections of TH 8, upgrading existing roadway systems in the Corridor, providing geometic/traffic control and access improvements along TH 8, and providing new roadway facilities including some alternatives that utilize the TH 243 bridge crossing over the St. Croix River.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build (2) Improvements within the existing TH 8 Alignment (3) Improvements on a new location.

The ''Trunk Highway 8 Scoping Document/Draft Scoping Decision Document'' will be published in the Summer 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are know to have an interest in the proposed action. The TH 8 Task Force made up of local agencies and citizens and a Technical Advisory Committee made up of Federal, State, and local officials has been established and has provided input in the development and refinement of alternatives and impact evaluation activities.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: May 7, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–11944 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: The FHWA published a notice of intent in the **Federal Register** of February 4, 2002 concerning an environmental impact statement (EIS) to be prepared for a proposed highway project within Maricopa County, Arizona. The contact information has changed, as well as the original project limits.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, One Arizona Center, Suite 410, 400 East Van Buren Street, Phoenix, AZ 85004–2285, Telephone (602) 379–3646.

Corrections

In the **Federal Register** of February 4, 2002, in FR Doc. 02–2565, Filed 2–1–02, 8:45 am, on page 5143, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, One Arizona Center, Suite 410, 400 East Van Buren Street, Phoenix, AZ 85004–2285, Telephone (602) 379–3646.

In the same document, on page 5143, in the first column, after the first sentence of the **SUPPLEMENTARY INFORMATION** section, add the following information: Project limits also include: (1) I–10 from Buckeye Road north to the south ramps of the I–10/SR 51/202L Traffic Interchange; (2) I–17 from 16th Street west to 7th Street; (3) I–10 from

Baseline Road south to the north ramps of the I–10/202L Traffic Interchange.

Dated: May 8, 2002.

Kenneth H. Davis,

District Engineer, Phoenix.

[FR Doc. 02–11968 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Stearns County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 23 in Paynesville, Stearns County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Lowell Flaten, Pre-Design Engineer, Minnesota Department of Transportation—District 8, P.O. Box 768, 2505 Transportation Road, Willmar, Minnesota 56201. Telephone (320) 214–3698; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 23 from the western Stearns County line, to approximately 1.0 mile (1.6 kilometers) east of the crossing of the North Fork of the Crow River, in Stearns County, Minnesota, a distance of approximately 4.4 miles (7.0 kilometers).

The proposed action is being considered to address future transportation demand, safety problems, access management, interregional trade corridor status, and pavement condition. Alternatives under consideration include (1) No-Build (2) three variations of ''Build'' alternatives involving reconstruction and/or realignment and new construction of TH 23 (3) ''Build'' alternative involving improvements along the existing alignment of TH 23.

The ''Trunk Highway 23 Scoping Document/Draft Scoping Decision Document'' will be published in the Summer 2002. A press release will be published to inform the public of the document's availability. Copies of the Scoping Document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: May 7, 2002.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Stanley M. Graczzyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–11943 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition Policies Act Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Highway Administration, as ''Lead Federal Agency'' for the Uniform Relocation Assistance and Real Property Action Policies Act (Uniform Act), will hold a series of listening sessions in Los Angeles, California; Washington, District of Columbia; Philadelphia, Pennsylvania; and Fort Worth, Texas.

The purpose of the listening sessions is to solicit comments on the need to update provisions of the Uniform Act and its implementing regulations 49 CFR Part 24. The Uniform Act provides for uniform and equitable treatment of persons displaced from their homes, business, or farms by Federal and federally assisted programs and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs. The agenda for the listening sessions may be examined on the FHWA web site at the following address *http://www.fhwa.dot.gov/realestate/ua.htm.*

DATES: The Uniform Act listening sessions are scheduled from 10 am to 2 pm as follows:

June 14, 2002—Fort Worth, Texas
June 25, 2002—Los Angeles, California
June 27, 2002—Washington, District of Columbia
July 9, 2002—Philadelphia, Pennsylvania

ADDRESSES: For the June 14, 2002, session: 819 Taylor Street, Room 1A03, Fort Worth, TX 76102.

For the June 25, 2002, session: 300 North Los Angeles Street, Room 8529, Los Angeles, CA 90012.

For the June 27, 2002, session: U.S. Department of Transportation, 400 7th Street, SW., Room 3200, Washington, DC 20590.

For the July 9, 2002, session: The Wanamaker Building, 100 Penn Square East, Room 818, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact FHWA Office of Real Estate Services representatives Reginald Bessmer (202) 366–2037 or Ronald Fannin (202) 366–2042 or by FAX at (202) 366–3713, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing

Office's web page at *http://www.access.gpo.gov/nara.*

Authority: Pub. L. 91–646 as amended, 23 U.S.C. 315, 49 CFR 1.48.

Susan B. Lauffer,

Director, Office of Real Estate Services.

[FR Doc. 02–11925 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12162]

Commercial Driver's License Standards; Exemption Application From Joest Racing USA, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The FMCSA has received an application from Joest Racing USA, Inc. (petitioner), a private carrier based in Tucker, GA, for an exemption from the commercial driver's licensing (CDL) requirements. Petitioner states an exemption is necessary to enable four drivers it employs to engage in interstate commerce transporting private property, comprised of race cars and related parts. Petitioner points out that its drivers are citizens and residents of Germany who would only enter the United States on average three times a year, for up to three months per trip. In support of its application, petitioner asserts that granting the exemption would have no impact on public safety because the drivers involved presently hold valid Germany-issued CDLs. In addition, petitioner states the comprehensive training and testing, that drivers holding German CDLs must undergo, ensures a greater level of safety. FMCSA invites interested parties to submit comments on the merits of the application, including whether FMCSA should grant or deny it.

DATES: Comments must be submitted by June 13, 2002.

ADDRESSES: You may submit your comments to the Docket Clerk, Docket No. FMCSA–2002–12162, U.S. Department of Transportation, Dockets Management System (DMS), Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Please note that due to delays in the delivery of U.S. mail, we recommend sending your comments by fax at (202) 493–2251, via the Internet using the DMS Web site at *http://dmses.dot.gov/submit,* or by professional delivery service. If you would like the DMS to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after you submit comments electronically. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, (202) 366–2990, Office of Bus and Truck Standards and Operations (MC–PSD); or Mr. Charles Medalen, (202) 366–0834, Office of the Chief Counsel (MC–CC), Federal Motor Carrier Safety Administration, DOT, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

All comments and related documents in the docket are also available for inspection and copying through the DMS Web site at *http://dms.dot.gov.*

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, now codified at 49 U.S.C. 31315 and 31316), requires FMCSA to publish a notice in the **Federal Register** for each exemption requested explaining that the request has been filed, provide the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and provide an opportunity to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

Exemption Request

Joest Racing USA, Inc., a private motor carrier of property as defined by 49 CFR 390.5, filed an application for an exemption from the commercial driver's licensing rules in 49 CFR part 383, that would allow drivers—Peter Ungar, Michael Schlemmer, Udo Wilhelm, and Hubert Neumann—to operate two commercial motor vehicles (CMVs) within the United States. According to its application, Joest has no employees in the United States; for economic reasons, its German CMV drivers double as race car mechanics; the value of its race cars is over $1 million each; it requires CMV drivers that are professionally trained in Germany in the loading and bracing of racing cars and parts; and to employ U.S. commercial drivers and train them would require considerable time and expense. A copy of the application for exemption is in the docket.

FMCSA is responsible for the administration and enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs), including the commercial driver's license requirements. Section 383.23(a)(2) states that no person shall operate a CMV unless such person possesses a CDL issued by his or her jurisdiction of domicile. There is an exception to this rule which states that CMV drivers domiciled in other jurisdictions that do not test drivers and issue licenses in accordance with Federal regulations must obtain a nonresident CDL from a State which does comply with the Federal testing and licensing standards.

Joest Racing USA, Inc. seeks an exemption because the drivers it employs are citizens and residents of Germany. These drivers are not able to obtain nonresidential CDLs in the United States because the States generally do not issue nonresidential CDLs to foreign drivers. The drivers hold valid CDLs issued by German authorities that meet license testing and driver qualification standards, including medical examinations, which are comparable with U.S. standards, and they have behind the wheel experience operating Joest's special type of CMV. Joest has two CMVs which are used to transport its private property (*i.e.,* race cars and related equipment) around the United States to participate in the ''American Le Mans Series'' racing circuit. The four drivers are only in the United States during certain periods.

Joest Racing USA, Inc. does not anticipate any adverse safety impacts from this exemption due to the fact that the German CDLs and German

authorities adhere to very strict testing procedures.

There will always be two qualified drivers in each motor vehicle. The drivers employed by Joest Racing USA, Inc. are fully qualified CMV operators with valid German CDLs. The company ensures that the qualifications are maintained and all current German laws are followed. Due to strict regulations in Germany for drivers holding German CDLs, Joest Racing USA, Inc. believes there will be a greater level of safety than by using United States drivers unfamiliar with its special type of truck/trailer.

Drivers applying to obtain a German CDL must take both a knowledge test and skills test before a license to operate CMVs is issued. Prior to taking the tests, drivers must complete approximately 40 hours of driving lessons. The required driving lessons are generally considered by licensing experts to be among the most difficult in the world. Therefore, the process for obtaining a CDL in Germany is considered to be comparable to, or as effective as the requirements of Part 383 of the Federal requirements and adequately assess the driver's ability to operate CMVs in the United States.

Once a driver is granted a German CDL he is allowed to drive any CMV currently allowed on German roads. There are no limits to types or weights of vehicles that may be operated by the drivers. The drivers affected by the exemption will be operating tractor-trailer units. The drivers expect to operate CMVs through the States of Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Nebraska, New Mexico, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Wyoming.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA is requesting public comment from all interested persons on this exemption application. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but FMCSA may make its decision at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: May 3, 2002.

Julie Anna Cirillo,

Assistant Administrator and Chief Safety Officer.

[FR Doc. 02–12036 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12264]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Freedom.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12264. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Freedom. Owner:* Roderick Nassif.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Size: 52.5; Gross: 28 Tons * * * Capacity: 12 guests''.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Pleasure charters on the Great Lakes, Intra-Coastal waterway, Florida Keys, and near shore.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1993. *Place of construction:* Queenlands, Australia.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''The impact will be minimal. The charter business will be operated out of Detroit, MI. This will be a specialty charter business. There are no other boats like this operating out of downtown Detroit. There are a few larger boats but none this size.''

(6) A statement on the impact this waiver will have on U.S. shipyards.

According to the applicant: ''There will be little effect on U.S. shipyards because there are few building boats in this size out of steel.''

Dated: May 8, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–12025 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12293]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Wolf Den.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12293. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Wolf Den. Owner:* Donnie Tillery.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* 29′9″ Long 10′9″ Beam.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''6 Passengers charter Sport fishing operating on the Gulf of Mexico from Perdido Pass Al, south 150 miles, west 150 miles and east 150 miles.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Not Available.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''The Alabama gulf Coast area (Gulf Shores, Orange Beach) is fast growing into one of the gulf Coast best and most popular sport fishing and vacation spots. As a result, there is a demand for additional sport fishing vessels. Therefore a waiver would not have any effect on present operators. I have a 6 passenger boat operating in the same area. I wouldn't want another if it impacted the present boat.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''The waiver would not have any adverse impact on US Shipyards. It would add to our small boat yard because the vessel would be drydocked at least once a year.''

Dated: May 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–12024 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34194 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights; Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34194 [1] to permit the trackage rights arrangement to extend only until August 30, 2002.

DATES: This exemption is effective on June 13, 2002. Petitions to stay must be filed by May 24, 2002. Petitions to reopen must be filed by June 3, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34194 (Sub-No. 1) must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] On April 8, 2002, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by UP to grant temporary overhead trackage rights to BNSF between UP milepost 2.3 in Omaha, NE, and UP milepost 76.0 in Sioux City, IA, a distance of 73.7 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34194 (STB served May 1, 2002). Trackage rights operations under the exemption were scheduled to be consummated on or after April 15, 2002.

the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD Services 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 8, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–12028 Filed 5–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–25]

Duty-Free Treatment of Articles Imported in Connection with the Volvo Ocean Race

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of designation of international athletic event for purposes of preferential tariff provision.

SUMMARY: This notice advises the public of the designation of the Volvo Ocean Race, a round-the-world international sailing competition, as a qualifying international athletic event under subheading 9817.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Effective for merchandise entered or withdrawn from warehouse for consumption on or after March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Craig A. Walker, Office of Regulations & Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

Section 1456 of the Tariff Suspension and Trade Act of 2000 (the ''Act'') (Public Law 106–476, 114 Stat. 2101) promulgated the duty-free treatment provided under subheading 9817.60.00, HTSUS, for certain articles brought into the U.S. for certain international athletic events. Subheading 9817.60.00, HTSUS, which implements section 1456(a) of the Act, states:

Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow.

Section 1456(b) of the Act, as implemented in Note 6 of Subchapter XII, HTSUS, provides that ''[a]ny article exempt from duty under heading 9817.60.00 shall be free of taxes and fees that may otherwise be applicable, but shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service.''

The Volvo Ocean Race (formerly known as the Whitbread Round the World Race) is a premier international sailing competition that takes place every four years and touches five continents and nine countries around the world. The current race, with seven teams participating, began in Southampton England on September 23, 2001, and is expected to take approximately nine months from start to finish. The fifth and sixth stopovers during the race are Miami, Florida, and Baltimore/Annapolis, Maryland.

Counsel for the Volvo Ocean Race has requested that the event be designated as a qualifying international athletic event for purposes of subheading 9817.60.00, HTSUS.

Determination

Section 1456 of the Tariff Suspension and Trade Act of 2000 provides that the Secretary of Treasury may determine that international athletic events not explicitly mentioned in the statute qualify as similar to those mentioned for purposes of the duty-free treatment provided for in subheading 9817.60.00, HTSUS.

It is determined that the Volvo Ocean Race qualifies as a similar international athletic event in accordance with section 1456 of the Tariff Suspension and Trade Act of 2000. Therefore, articles meeting the conditions and requirements set forth in subheading 9817.60.00, HTSUS, imported in connection with the Volvo Ocean Race, will be entitled to duty-free treatment.

Robert C. Bonner,

Commissioner of Customs.

Approved: May 8, 2002.

Gordana Earp,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–11945 Filed 5–13–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–26]

Tuna Fish—Tariff-Rate Quota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 2002.

The tariff-rate quota for Calendar Year 2002, on tuna classifiable under subheading 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Each year the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year. This document sets forth the quota for calendar year 2002.

EFFECTIVE DATES: The 2002 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Connie Chancey, Chief, Quota Branch, Textile Enforcement and Operations Division, Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, (202) 927–5399.

Background: It has now been determined that 18,119,908 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 2002, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: May 2, 2002.

Robert C. Bonner,

Commissioner.

[FR Doc. 02–11946 Filed 5–13–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 93

Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Asporogenic B. ANTHRACIS Expression System

Correction

In notice document 02–11067 beginning on page 22412 in the issue of Friday, May 3, 2002 make the following correction:

On page 22413, in the first column, under ''**ADDRESSES:**'' in the fifth line, ''21705–5012'' should read ''21702–5012''.

[FR Doc. C2–11067 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Load Securing and Release System

Correction

In notice document 02–11073 appearing on page 22413 in the issue of Friday, May 3, 2002 make the following correction:

On page 22413, in the third column, under ''**FOR FURTHER INFORMATION CONTACT:**'', in the fifth line, in the phone number ''(508) 233–4298–4298'' delete the duplicate ''–4298''.

[FR Doc. C2–11073 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Low-Backscatter Aperture Structure

Correction

In notice document 02–11070 beginning on page 22413 in the issue of Friday, May 3, 2002 make the following corrections:

1. On page 22414, in the first column, under ''**ADDRESSES:**'', in the sixth line, '' 21705–5012'' should read ''21702–5012''.

2. On the same page, in the same column, under '' **SUPPLEMENTARY INFORMATION:**'', in the fourth line, after the word ''system'' insert the word ''can''.

[FR Doc. C2–11070 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 14, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Northwestern Hawaiian Islands, HI; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH09

Endangered and Threatened Wildlife and Plants; Proposed Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Northwestern Hawaiian Islands, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for five (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*) of the six plant species known historically from the Northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll) that are listed under the Endangered Species Act of 1973, as amended. Critical habitat is not proposed for *Cenchrus agrimonioides* var. *laysanensis* as it has not been seen in the wild for over twenty years and no viable genetic material of this variety is known to exist.

We propose critical habitat designations for five species on three islands (Nihoa, Necker, and Laysan) totaling approximately 498 hectares (ha) (1,232 acres (ac)). If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until July 15, 2002. Public hearing requests must be received by June 28, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (*see* **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are six plant species that, at the time of listing, were reported from the Northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll) (Table 1). *Amaranthus brownii, Cenchrus agrimonioides* var. *laysanensis, Mariscus pennatiformis* ssp. *bryanii, Pritchardia remota,* and *Schiedea verticillata* are endemic to the Northwestern Hawaiian Islands, while *Sesbania tomentosa* is reported from one or more other islands, as well as the Northwestern Hawaiian Islands.

In previously published proposals we proposed that critical habitat was prudent for *Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa.* No change is made to these prudency determinations in this proposal and they are hereby incorporated in this proposal (65 FR 66808, 65 FR 79192, 67 FR 3940, 67 FR 9806).

In this proposal, we propose that critical habitat designation is prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* for which proposed prudency determinations have not been made previously, because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity because of critical habitat designation.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF SIX SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Hawaiian Islands, Kahoolawe, Niihau
Amaranthus brownii (no common name)							Nihoa (C)
Cenchrus agrimonioides var. *laysanensis* (kamanomano)							Kure (H), Laysan (H), Midway ((H)
Mariscus pennatiformis (no common name)	H	H			C	R	Laysan (C)
Pritchardia remota (loulu)							Nihoa (C), Laysan (R)
Schiedea verticillata (no common name)							Nihoa (C)
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Niihau (H), Kahoolawe (C), Necker (C), Nihoa (C)

KEY:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.

R (Reported)—reported from undocumented observations.
NW Hawaiian Islands includes Kure Atoll, Midway Atoll, and Laysan, Necker, Nihoa island.

In this proposal, we propose designation of critical habitat for five (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*) of the six species reported from the Northwestern Hawaiian Islands. Critical habitat is not proposed for *Cenchrus agrimonioides* in the Northwestern Hawaiian Islands, because *C. agrimonioides* var. *laysanensis* has not been seen in the wild for over twenty years and no viable genetic material of this variety is known to exist.

Critical habitat is proposed for designation on the islands of Nihoa, Necker, and Laysan. The land area for these three islands totals approximately 498 ha (1,232 ac).

The Northwestern Hawaiian Islands

The NWHI are a chain of islands that extend along a linear path approximately 1,600 kilometers (km) (1,000 miles (mi)) northwest from Nihoa Island to Kure Atoll (Figure 1). They are remnants of once larger islands that have slowly eroded and subsided, which today exist as small land masses or coral atolls that cover the remnants of the volcanic islands (Department of Geography 1998; U.S. Fish and Wildlife Service (USFWS) 1998).

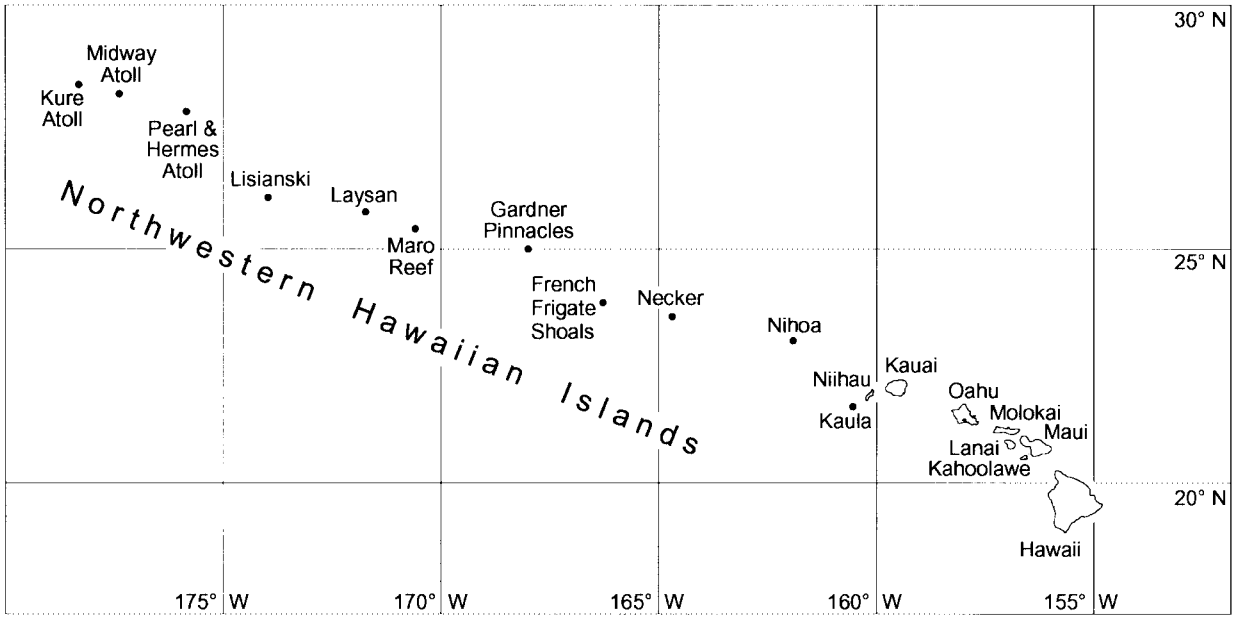

Figure 1. Northwestern Hawaiian Islands

Nihoa rises approximately 274 meters (m) (900 feet (ft)) above sea level and has an area of approximately 69 ha (171 ac). Its steep topography and crater shape reveal its volcanic origin. Necker Island, less than 92 m (300 ft) in elevation and 19 ha (46 ac) in area, consists of thin-layered weathered lava flows. La Perouse Pinnacles at French Frigate Shoals and Gardner Pinnacles are the last exposed volcanic remnants in the archipelago. French Frigate Shoals is a crescent shaped atoll nearly 29 km (18 mi) across. More than a dozen small sandy islands dot the fringes of this atoll. Maro Reef is a largely submerged area marked by breakers and a few pieces of coral that intermittently protrude above the waterline. Laysan Island is nearly 5.18 square kilometer (sq km) (2 square miles (sq mi)) in size and is fringed by a reef. An 81 ha (200 ac) hypersaline lagoon is located in the center of the island. Lisianski Island is 147 ha (364 ac) in size, but is bounded to the north by an extensive reef system. A central lagoon once found on this island has filled with sand. Pearl and Hermes Reef, an inundated atoll, includes nearly 40,469 ha (100,000 ac) of submerged reef and seven small sandy islets totaling less than 34 ha (85 ac). Midway Atoll is approximately 8 km (5 mi) in diameter and includes three islands: Sand, Eastern, and Spit. Both Sand and Eastern islands are highly altered by man. Kure Atoll is the northernmost exposed land in the Hawaiian archipelago. Two islands, Green and Sand, are found on the southern edge of the atoll and are included in the Hawaii State Seabird Sanctuary System. Green Island was altered considerably in the past and today suffers from enormous alien species problems (Elizabeth Flint, USFWS, pers. comm., 2000; USFWS 1986).

One listed plant species was known from Kure Atoll (*Cenchrus agrimonioides* var. *laysanensis*), three were known from Laysan (*Cenchrus agrimonioides* var. *laysanensis, Mariscus pennatiformis* and *Pritchardia remota*), one from Midway (*Cenchrus agrimonioides* var. *laysanensis*), four from Nihoa (*Amaranthus brownii, Pritchardia remota, Schiedea verticillata* and *Sesbania tomentosa*) and one from Necker (*Sesbania tomentosa*) (Table 1).

Nihoa (209 km (140 mi) from Niihau) and Necker (an additional 290 km (180 mi) beyond Nihoa) are closest to the main Hawaiian Islands. Both are small, residual fragments of volcanoes that formed 7.2 and 10.3 million years ago respectively (USFWS 1986). Although both of these islands were uninhabited at the time of their modern discovery in

the late eighteenth century, there is an extensive heiau (indigenous place of worship, shrine) complex on Necker, and agricultural terraces and other Hawaiian archaeological features can be found on Nihoa (Cleghorn 1984, Department of Geography 1998, USFWS 1986).

In 1892, a guano mining business began operation on Laysan and flourished until the last load was shipped in 1904. During this time, rabbits were introduced to Laysan for a rabbit canning industry, and allowed to reproduce and roam freely (Morin and Conant 1998, Tomich 1986). This, too, failed as a profitable business and no attempt was made to control the number of rabbits on the island. The rabbits were finally eradicated from the island in the early 1920s, though not before the vegetation had been thoroughly devastated. Since then, the vegetation of Laysan has recovered to a remarkable degree, though some species, like the native palms (*Pritchardia* sp.), are no longer found on the island (Tomich 1986; E. Flint, pers. comm., 2000).

Kure Atoll was discovered and named in 1827 by the captain of a Russian vessel. Between 1876 and 1936 Australian Copra & Guano Ltd. mined guano from Green Island and Sand Island, the two islands that make up Kure Atoll. Military bases were built on the islands during World War II and a Loran C station with two 158 m (518 ft) high masts was operated until 1998. The towers are no longer on the islands. The airstrip built on Green Island is no longer usable and landing is only possible by boat (USFWS 1998a).

Midway Atoll was discovered and named Middlebrook Islands in 1859 by Captain Nick Brooks. The atoll was taken into possession by the United States in 1867 and in 1903 President Theodore Roosevelt placed the atoll under the control of the Navy. In 1935 Pan American World Airways set up an airbase for the weekly Trans-Pacific Flying Clipper Seaplane service. In 1941, the Japanese attacked Midway Atoll on their return from the attack on Pearl Harbor, but in 1942 the United States ambushed and defeated the Japanese Fleet north of the atoll, turning the tide of World War II in the Pacific. In 1988, the atoll was added to the National Wildlife Refuge system and in 1996 the jurisdiction of Midway Atoll was transferred from the U.S. Navy to the Department of Interior (USFWS 2000). Despite this evidence of earlier human use, these islands continue to support an assemblage of endemic plants and animals not found elsewhere in the archipelago (Department of Geography 1998).

Hawaiian Islands National Wildlife Refuge

The reefs and islets of the Northwestern Hawaiian chain from Nihoa Island through Pearl and Hermes Atoll are protected as the Hawaiian Islands National Wildlife Refuge (HINWR). The HINWR was established in 1909 to protect the large colonies of seabirds, which were being slaughtered for the millinery trade, as well as a variety of other marine organisms, including sea turtles and the critically endangered Hawaiian monk seal (*Monachus schauinslandi*), and to put a halt to the unregulated commercial exploitation of wildlife resources (Executive Order 1019). Within its boundaries are eight islands and atolls: Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, and Pearl and Hermes Atoll. There is no general public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms, like the Hawaiian monk seal, on these islands to human disturbance and the high risk of importation of alien plant and invertebrate species. In addition, strict quarantine procedures are in effect for those accessing the refuge. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR (E. Flint, pers. comm., 2000).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

On December 4, 2000, President Clinton issued an Executive Order establishing the 33,993,594 ha (84 million ac) Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that includes the marine waters and submerged lands of the NWHI, extending approximately 2,222 km (1,200 nautical mi) long and 185 km (100 nautical mi) wide. The Reserve is adjacent to the State of Hawaii waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the HINWR outside of state waters.

Discussion of the Plant Taxa

Species Endemic to the Northwestern Hawaiian Islands

Amaranthus brownii (no common name)

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an herb with leafy upright or ascending stems, 30 to 90 centimeters (cm) (1 to 3 feet (ft)) long. The slightly hairy, alternate leaves are long and narrow, 4 to 7 cm (1.6 to 2.8 inches (in)) long, 1.5 to 4 millimeter (mm) (0.06 to 0.16 in) wide, and more or less folded in half lengthwise. Flowers are either male or female, and both sexes are found on the same plant. This species can be distinguished from other Hawaiian members of the genus by its spineless leaf axils, its linear leaves, and its fruit which does not split open when mature (Wagner *et al.* 1999).

Amaranthus brownii is an herbaceous annual with a growing season that extends from December to June or July. Conant (1985) reported finding plants in an early stage of flowering in February and collecting seed from dead plants during June. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. The means of pollination are unknown (USFWS 1998d).

Amaranthus brownii is the rarest native plant on the island of Nihoa (Conant 1985). When it was first collected in 1923, it was ''most common on the ridge leading to Miller's Peak, but abundant also on the ridges to the east'' (Herbst 1977). In 1983, the two known groupings of colonies were separated by a distance of 0.4 km (0.25 mi) and contained approximately 35 plants: 1 colony of about 23 plants near Miller's Peak and about a dozen plants in 3 small colonies in Middle Valley. No plants have been seen at either location since 1983, even though Service staff have surveyed for them annually (USFWS 1998d). In order to get an accurate population count and collect seeds or cuttings to establish *ex situ* populations, it will be necessary to conduct winter surveys. However, none of the surveys since 1983 have been done during the winter, when these annuals are easiest to find and identify. Access to the island is limited particularly during the winter due to difficult and dangerous landing conditions. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply (Cindy Rehkemper, USFWS, pers. comm., 2001).

Amaranthus brownii typically grows in shallow soil on rocky outcrops. It is found in fully exposed locations at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Schiedea verticillata* (no common name (NCN)), *Chenopodium oahuense* (aheahea), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Ipomoea indica* (koali awa), *Scaevola sericea* (naupaka), *Sida fallax* (ilima), *Solanum nelsonii* (akia), *Sicyos*

pachycarpus (kupala), *Eragrostis variabilis* (kawelu), and *Panicum torridum* (kakonakona) (Hawaii Natural Heritage Program (HINHP) Database 2000).

The threats to *Amaranthus brownii* on Nihoa are competition with the alien plant *Portulaca oleracea* (pigweed); changes in the substrate; fire; introduction of rats; human disturbances; a risk of extinction from naturally occurring events (such as hurricanes); and reduced reproductive vigor due to the small number of extant individuals (USFWS 1998d).

Pritchardia remota (loulu)

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 4 to 5 m (13 to 16 ft) tall with a ringed, wavy trunk about 15 cm (5.9 in) in diameter. The rather ruffled, fan-shaped leaves are about 80 cm (31 in) in diameter and are somewhat waxy to pale green with a few tiny scales on the lower surface. The flowering stalks, up to 30 cm (12 in) long, are branched and have flowers arranged spirally along the hairless stalks. It is the only species of *Pritchardia* on the island of Nihoa and can be distinguished from other species of the genus in Hawaii by its wavy leaves; its short, hairless inflorescences; and its small, globose (spherical/round) fruits (Read and Hodel 1999, 61 FR 43178).

Pritchardia remota is a long-lived perennial, and populations have remained stable for several years. Conant (1985) reported finding plants with fruit and flowers in the spring and summer. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. The means of pollination are unknown.

Pritchardia remota was historically known from Nihoa and Laysan islands. Currently, *Pritchardia remota* is known from four colonies presently extant along 0.2 km (0.1 mi) of the length of each of two valleys which are about 0.6 km (0.4 mi) apart on opposite sides of the island of Nihoa. Including seedlings, more than 680 plants are found in West Palm Valley and more than 392 plants in East Palm Valley (HINHP Database 2000). A few trees also grow at the bases of basaltic cliffs on the steep outer slopes of each of the two valleys (HINHP Database 2000). Plants grow from 15 to 151 m (50 to 500 ft) in elevation.

Pritchardia remota is unusual among Hawaiian members of the genus in that it occurs in the relatively dry climate found on Nihoa. However, its distribution on Nihoa may be related to water availability since many plants are found in valleys and near freshwater seeps by cliffs (USFWS 1998d). Within the *Pritchardia remota* coastal forest community, *Pritchardia remota* assumes complete dominance with a closed canopy and thick layers of fallen fronds in the understory (Gagne and Cuddihy 1999). Native plants growing nearby include *Chenopodium oahuense, Sesbania tomentosa* (ohai), *Solanum nelsonii*, and *Sida fallax* (USFWS 1998d).

The threats to *Pritchardia remota* on the island of Nihoa are competition with alien plants, seed predation by rodents, possibly alien insects, fire, human disturbances, a risk of extinction from naturally occurring events (such as landslides), and reduced reproductive vigor due to the small number of extant individuals (USFWS 1998d).

Schiedea verticillata (no common name)

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herb which dies back to an enlarged root during dry seasons. The stems, which can reach 0.4 to 0.6 m (1.3 to 2 ft) in length, are upright or sometimes pendent (drooping). The stalkless leaves are fleshy, broad, and pale green; usually arranged in threes; and measure 9 to 15 cm (3.5 to 5.9 in) long and 7 to 9 cm (2.8 to 3.5 in) wide. Flowers are arranged in open, branched clusters, usually 17 to 25 cm (6.7 to 9.8 in) long. This species, the only member of its genus to grow in the Northwestern Hawaiian Islands, is distinguished from other species of the genus by its exceptionally large sepals and, usually, three leaves per node (Wagner *et al.* 1999). Dr. Steve Weller of the University of California at Irvine, found that *Schiedea verticillata* produces more seeds and more nectar than any other species in its genus. It also has the highest degree of genetic diversity between individuals of any species in the genus (USFWS 1998d).

Schiedea verticillata is a short-lived perennial. Conant's data (1985) indicated that the reproductive cycle may not be seasonal, since many life stages were found simultaneously throughout the year. Her observations also indicate that the individual plants flower, set, and disperse seed in a relatively short period of time. The means of pollination are unknown (USFWS 1998d).

All but one historically known colony of *Schiedea verticillata* are known to be extant on Nihoa. Colony locations and levels appear to have shifted somewhat, but total numbers have remained relatively stable for several years. Seven populations, containing a total of 497, individuals were counted between 1980 and 1983 (HINHP Database 2000). In 1992, Service staff counted only 170 to 190 plants in six populations (USFWS 1998d). However, in 1996, Rowland counted a total of 359 plants in 10 populations (USFWS 1998d). These were distributed primarily on the western half of the island, although a population of 13 plants was seen on the east spur of the island near Tunnel Cave. Two previously unobserved populations containing 2 and 99 plants, respectively, were seen on the north cliffs above Miller's Valley. Other locations included a population of 24 plants at Dog's Head; 37 plants at Devil's Slide; 10 plants near Miller's Peak; a previously unknown population of 62 plants on the ridge separating West and West Palm valleys; 80 plants near lower West valley; 28 individuals near Pinnacle Peak; and a small colony of 4 plants northeast of Pinnacle Peak (USFWS 1998d).

Schiedea verticillata typically grows in rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest at elevations between 30 and 242 m (100 and 800 ft). Associated taxa include *Tribulus cistoides* (nohu), *Eragrostis variabilis, Rumex albescens* (huahuako), and lichens on surrounding rock (HINHP Database 2000).

The threats to *Schiedea verticillata* on the island of Nihoa are competition with alien plant species, possible herbivory by alien insect species, predation by rodents, human disturbances, a risk of extinction from naturally occurring events (such as rockslides), and reduced reproductive vigor due to the small number of individuals (Conant 1985, USFWS 1998d).

Multi-Island Species

Cenchrus agrimonioides (kamanomano)

Cenchrus agrimonioides, a short-lived perennial member of the grass family (Poaceae), is a grass with leaf blades which are flat or folded and have a prominent midrib. The two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides*, differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. *Cenchrus agrimonioides* var. *agrimonioides* is known only from the main Hawaiian Islands while *Cenchrus agrimonioides* var. *laysanensis* is known only from (endemic to) the NWHI. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of this plant. Reproductive cycles,

longevity, specific environmental requirements, and limiting factors are generally unknown; however, this species has been observed to produce fruit year round (USFWS 1999).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui; there is also an undocumented report from Hawaii Island (61 FR 53108). Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui (65 FR 79192). Historically, *Cenchrus agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway in the Northwestern Hawaiian Islands but has not been seen there since about 1980 (HINHP Database 2000; O'Connor 1999). Morin and Conant (1998) reported that *Cenchrus agrimonioides* var. *laysanensis* disappeared from Laysan before 1923, from Midway Atoll sometime shortly after 1902, and was last seen on Green Island, Kure Atoll in about 1980. The last comprehensive botanical surveys of all of these islands were conducted in the 1980s. No viable genetic material of this variety is known to exist. Because this variety has not been seen in the wild for over 20 years and no viable genetic material is known to exist, critical habitat is not proposed at this time.

Cenchrus agrimonioides var. *laysanensis* was historically found on coastal sandy substrate in *Scaevola-Eragrostis variabilis* scrub at an elevation of 5 m (16 ft).

This species was threatened by competition with various alien plant species, seed predation by rats and mice, and, potentially, alien insects, and fire.

Mariscus pennatiformis (no common name)

Mariscus pennatiformis, a member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. The stout, smooth, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) long, slightly concave, and 3 to 7 mm (0.1 to 0.3 in) in diameter in the lower part. The three to five linear, somewhat leathery leaves are 8 to 17 mm (0.3 to 0.7 in) wide and at least as long as the stem. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets (elongated flower-clusters); the leaf width; and the length and diameter of stems. The two subspecies are distinguished primarily by larger and more numerous spikelets, larger achenes (dry, one-seeded fruits), and more overlapping and yellower glumes (scaly bracts of spikelets) in ssp. *pennatiformis* as compared with ssp. *bryanii* (Koyama 1999). *Mariscus pennatiformis* ssp. *bryanii* is the only subspecies found in the Northwestern Hawaiian Islands.

Individuals of *Mariscus pennatiformis* ssp. *bryanii* on Laysan Island were closely monitored for 10 years, but flowering was never observed until the continuous flowering of one individual from November 1994 to December 1995 (USFWS 1999). This flowering event coincided with record high rainfall on Laysan (USFWS 1999). Little else is known about the life history of this plant (USFWS 1999).

Historically, *Mariscus pennatiformis* was found on Kauai, Oahu, and Hawaii. Currently, *Mariscus pennatiformis* ssp. *pennatiformis* is found on Maui while *Mariscus pennatiformis* ssp. *bryanii* is known only from Laysan Island. This subspecies was found until recently on the southeast end of the central lagoon and the west and northeast sides of the island on sandy substrate at an elevation of 5 m (16 ft) (HINHP Database 2000, Koyama 1999). The population has fluctuated from as many as 200 to as few as 1 individual over the past 10 years. Currently, a single population of about 200 individuals of *Mariscus pennatiformis* ssp. *bryanii* remains on the southeast end of the lagoon (USFWS 1999).

Mariscus pennatiformis ssp. *bryanii* is found on coastal sandy substrate at an elevation of 5 m (16 ft). Associated species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis*, and *Ipomoea* sp. (HINHP Database 2000, Koyama 1999).

The threats to *Mariscus pennatiformis* ssp. *bryanii* on the island of Laysan are seed predation by the endangered Laysan finch (*Telespiza cantans*) and destruction of the remaining individuals during burrowing activities of nesting seabirds. The native plant *Ipomoea pes-caprae* (beach morning glory), is another possible threat since it periodically grows over the *Mariscus* individuals (USFWS 1999). In addition, native *Sicyos* spp. vines, *Eragrostis variabilis*, and *Boerhavia repens* (alena) appear to have impeded natural dispersal of *Mariscus pennatiformis* ssp. *bryanii* to other suitable locations (Schultz 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the legume family (Fabaceae), is typically a sprawling short-lived perennial shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets that are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet, or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands (59 FR 56333, Geographic Decision Systems International (GDSI) 2000, USFWS 1999, HINHP Database 2000). On Nihoa this species has been described as relatively common in some areas, with one population consisting of several thousand individual plants known (USFWS 1999). On Necker Island, *Sesbania tomentosa* is known to occur from 45 m (150 ft) elevation to the 84 m (276 ft) summit, growing on the tops of all hills of the main island. A few individuals are found on the Northwest Cape, as well (USFWS 1999).

Sesbania tomentosa is found in shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland (HINHP Database 2000, Geesink *et al.* 1999). Associated plant species include *Sida fallax, Scaevola sericea, Solanum nelsonii,* and *Pritchardia remota* (HINHP Database 2000).

The primary threats to *Sesbania tomentosa* on the islands of Nihoa and Necker are competition with various alien plant species; lack of adequate pollination; seed predation by rats and mice and, potentially, alien insects; and fire (USFWS 1999).

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the

Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Pritchardia remota* and *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*) were considered endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including *Amaranthus brownii, Cenchrus agrimonioides* var. *laysanensis*, and *Sesbania tomentosa*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). A summary of the status categories for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* in the 1980 to 1993 notices of review can be found in Table 2(a). We listed these six species as endangered between 1994 and 1996. A summary of the listing actions can be found in Table 2(b).

TABLE 2(a).—SUMMARY OF CANDIDACY STATUS FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Federal Register Notice of Review			
	1980	1985	1990	1993
Amaranthus brownii	C1	C1	C1	
Cenchrus agrimonioides var. *laysanensis*	C1*	C1*	C1*	C2*
Mariscus pennatiformis	C1	C1		
Pritchardia remota	C1	C1	C1	
Schiedea verticillata	C1	C1	C1	
Sesbania tomentosa	C1*	C1*	C1	

Key:
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2*: Taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat are not currently available to support proposed rules. Continued existence of these species is in doubt.

Federal Register Notices of Review:
1980: 45 FR 82479
1985: 50 FR 39525
1990: 55 FR 6183
1993: 58 FR 51144

TABLE 2(b).—SUMMARY OF LISTING ACTIONS FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Federal status	Proposed Rule		Final Rule	
		Date	Federal Register	Date	Federal Register
Amaranthus brownii	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Cenchrus agrimonioides	E	10/2/95	60 FR 51417	10/10/96	61 FR 53108
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Pritchardia remota	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Schiedea verticillata	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333

Key: E = Endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt.* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Among other things, the Court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The Court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–1285).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the Court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the Court stated that we did not consider benefits outside of the consultation requirements. In the Court's view, these potential benefits include substantive and procedural protections. The Court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the Court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The Court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the Court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the Court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, county governments, the State of Hawaii's Division of Forestry and Wildlife, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation will provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

To comply with the Court's order, we are publishing seven rules that will include proposed determinations of whether critical habitat is prudent, along with proposed designations if appropriate. Each rule, arranged by island or island group (Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwestern Hawaiian Islands; Hawaii; Oahu), has or will contain the prudency determination (or incorporate the prudency determination when it has been published in a prior proposal) and, when appropriate, proposed designations of critical habitat for each plant species known to occur from that island or group of islands. The proposed rules for Kauai and Niihau, Maui and Kahoolawe, Lanai, and Molokai have already been published. On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations for Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the Court's order. Revised proposals for the islands of Kauai and Niihau, Lanai, Maui and Kahoolawe, and Molokai have also been published, consistent with a court ordered stipulation dated October 5, 2001, extending the deadlines for the rulemakings to allow us to prepare revised proposals taking into account information received during the public comment periods. In earlier proposals we determined that critical habitat was prudent for three species (*Cenchrus agrimonioides* (65 FR 79192), *Mariscus pennatiformis* (65 FR 79192), and *Sesbania tomentosa* (65 FR 66808) that are reported from the Northwestern Hawaiian Islands. This prudency determination and proposed rule designating critical habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa,* from the NWHI responds to the court order in *Conservation Council for Hawaii v. Babbitt.*

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed

critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public, as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and populations and their inherent immobility, the three plants may be vulnerable to unrestricted collection, vandalism, or disturbance, though this is unlikely given their inaccessibility. Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia remota.* While we have determined that designation of critical habitat is not prudent for other species of *Pritchardia* because the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection (65 FR 66808, 65 FR 83158), we do not believe this species is threatened by these same activities because of its inaccessibility. Nihoa is more than 273 km (170 mi) from Lihue, Kauai, and more than 1,600 km (1,000 mi) from Midway. It is a part of the HINWR and a permit is required for access to the island. Access to the island is further limited due to difficult and dangerous landing conditions. There is only a 30 percent chance of a safe landing on the rocky coast, needing a soft bottomed boat (such as a Zodiac), small waves, and good timing. Passengers must be dropped off and the boat sent back out to sea (there are no mooring docks or beaches), returning to pick up the passengers, if conditions allow. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply (Cindy Rehkemper, USFWS, pers. comm., 2001).

We examined the evidence available for *Amaranthus brownii* and *Schiedea verticillata* and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the Court's discussion of these regulations, we do not find that these three species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. All of these species are reported on Federal lands within national wildlife refuges where most actions would be subject to section 7. Critical habitat designation for habitat currently occupied by these species would usually be unlikely to change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species. However, there also may be some educational or informational benefits to the designation of critical habitat. Education benefits include the notification of land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that designation of critical habitat is prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata.*

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We are proposing to define the primary constituent elements on the basis of general habitat features of the areas in which the plant species are reported from, such as the type of plant community, associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. These habitat features provide the ecological components required by the plants. The type of plant community and associated native plant species provide information on specific microclimatic conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale provides information on soil type, elevation, rainfall regime, and temperature. Elevation provides information on daily and seasonal temperature and sun intensity.

On Nihoa Island, the currently known primary constituent elements of critical habitat for *Amaranthus brownii* are habitat components that provide: (1) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Schiedea verticillata, Chenopodium oahuense, Ipomoea pes-caprae* ssp. *brasiliensis, Ipomoea indica, Scaevola sericea, Sida fallax, Solanum nelsonii, Sicyos pachycarpus, Eragrostis variabilis,* or *Panicum torridum*; and (2) elevations between 30 and 242 m (100 and 800 ft).

On Laysan and Nihoa islands, the currently known primary constituent elements of critical habitat for *Pritchardia remota* are habitat components that provide: (1) Coastal forest community containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Solanum nelsonii,* or *Sida fallax*; and (2) from 15 to 151 m (50 to 500 ft) in elevation.

On Nihoa Island, the currently known primary constituent elements of critical habitat for *Schiedea verticillata* are habitat components that provide: (1) Rocky scree, soil pockets and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Tribulus cistoides, Eragrostis variabilis, Rumex albescens*, or lichens; and (2) elevations between 30 and 242 m (100 and 800 ft).

On Laysan Island, the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* are habitat components that provide: (1) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis,* or *Ipomoea* sp.; and (2) elevation of 5 m (16 ft).

On Nihoa and Necker islands, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* are habitat components that provide: (1) shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland and containing one or more of the following associated native plant species: *Sida fallax, Scaevola sericea, Solanum nelsonii*, or *Pritchardia remota*; and (2) elevations between sea level and 84 m (0 and 276 ft).

C. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain those physical and biological features that are essential for the conservation of the five plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, biological surveys and reports, our recovery plans for these five species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (HINHP 2000; HPPRCC 1998; USFWS 1998d, 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in

1999 we published them in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998).

Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the five listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include habitat that was not identified as essential habitat in the 1998 recommendations.

We considered several criteria in the selection and proposal of specific boundaries for critical habitat units for these five species. These criteria, which follow the recommendations in the approved recovery plans, include expansion of existing wild populations and reestablishment of wild populations within historic range of each species (USFWS 1998d, 1999). The long-term probability of the conservation of these species is dependent upon the protection of existing population sites and suitable unoccupied habitat within historic range.

For these five plant species from the Northwestern Hawaiian Islands, currently and historically occupied habitat was examined. Critical habitat is not proposed for *Cenchrus agrimonioides* var. *laysanensis* on the Northwestern Hawaiian Islands for the following reasons. *Cenchrus agrimonioides* var. *laysanensis* is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and non-native plant species, and *Cenchrus agrimonioides* var. *laysanensis* has not been seen during these monitoring efforts (Morin and Conant 1998). On Midway, *Cenchrus agrimonioides* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999 (Chris Swenson, USFWS, pers. comm. 2002). *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001 (DOFAW, 2001). In addition, no viable genetic material of this plant is know to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely. On the other hand, critical habitat is proposed for *Amaranthus brownii*, a plant that has not been seen since the early 1980s, on Nihoa because it is believed that there is a strong likelihood that this Nihoa endemic is still extant on the island. None of the surveys on Nihoa in the last twenty years have been conducted during the winter when *Amaranthus brownii*, an annual, is most easily located and identified. Winter surveys on the Nihoa have not been conducted because access to the island is particularly limited during this season due to difficult and dangerous landing conditions.

Critical habitat boundaries were delineated to include the entire island on which the species are found or were historically found, for mapping convenience. Within the critical habitat boundaries, adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In addition, existing man-made features and structures within boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

All currently or historically occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the five plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites including published and unpublished reports, surveys, and plans; internal letters, memos, trip reports; and, section 7 consultations. Additionally, we considered current management for these plants on national wildlife refuge lands.

For the five species for which designation of critical habitat is prudent, we know of no areas in the HINWR at this time that do not require special management or protection.

Administration

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the five plant species (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa*) and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we may have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

Proposed critical habitat includes habitat for five species on the islands of Nihoa, Necker, and Laysan. Lands proposed are under Federal ownership and managed by the Department of the Interior (the Service). The entire islands of Nihoa, Necker, and Laysan are proposed as critical habitat. A brief description of each island is presented below.

Descriptions of Critical Habitat in the Northwestern Hawaiian Islands

Key for Nihoa, Necker, and Laysan.

‡Not all suitable habitat is proposed to be designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.
2. Island endemic.
3. Multi-island species with current locations on other islands.
4. Multi-island species with no current locations on other islands.
5. Current locations do not necessarily represent viable populations with the required number of mature individuals.
6. Several current locations may be affected by one naturally occurring, catastrophic event.
7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.
8. Not all currently occupied habitat was determined to be essential to the recovery of the species.
9. Life history, long-lived perennial-100 mature, reproducing individuals per population.
10. Life history, short-lived perennial-300 mature, reproducing individuals per population.
11. Life history, annual-500 mature, reproducing individuals per population.
12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.
13. Species has extremely restricted, specific habitat requirements.
14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

Nihoa

The proposed unit Nihoa provides occupied habitat for three species: *Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Nihoa and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Pritchardia remota,* or 300 mature individuals per population for *Schiedea verticillata,* and *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Nihoa below). This unit also provides unoccupied habitat for one species: *Amaranthus brownii.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Nihoa, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 500 mature individuals per population for *Amaranthus brownii,* throughout its known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Nihoa below). *Amaranthus brownii* has not been seen in the wild since 1983. Service staff have surveyed for this species annually, though never in the winter season when it is most likely to be seen. Access to the island is limited, particularly during the winter due to difficult and dangerous landing conditions. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply. There is a high likelihood that the plants exist but are not detectable during the dry season and that there is a seed bank present on the island.

Nihoa has an area of approximately 69 ha (171 ac). Nihoa is owned solely by the Federal government.

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Table for Nihoa

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Amaranthus brownii	X*	X**			X						X	X	X***		*Not enough suitable habitat for 8 to 10 populations at this time. ** Historical on Nihoa. ***Shallow soil on rocky outcrops.
Pritchardia remota	X*		X		X	X			X			X	X**		*Species is wide ranging.‡ ** Valleys and near freshwater seeps by cliffs.
Schiedea verticillata	X	X			X	X				X		X	X*		* Rocky scree, soil pockets and cracks on coastal cliff faces.
Sesbania tomentosa	X*		X		X	X				X					*Species is wide ranging.‡

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Necker

The proposed unit Necker provides occupied habitat for one species, *Sesbania tomentosa.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation

on Necker and provides habitat to support one or more of the 8 to10 populations and 300 mature individuals per population for *Sesbania tomentosa,* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Necker below).

Necker has an area of approximately 18 ha (46 ac). Necker is owned solely by the Federal government.

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Table for Necker

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Amaranthus brownii	X*	X**			X						X	X	X***		*Not enough suitable habitat for 8 to 10 populations at this time. ** Historical on Nihoa. ***Shallow soil on rocky outcrops.

Laysan

The proposed unit Laysan provides occupied habitat for two species: *Mariscus pennatiformis* ssp. *bryanii* and *Pritchardia remota.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Laysan and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Pritchardia remota*, or 300 mature individuals per population for *Mariscus pennatiformis* ssp. *bryanii* throughout their known historical range considered by the recovery plan to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Laysan below).

Laysan has an area of approximately 411 ha (1,015 ac). Laysan is owned solely by the Federal government.

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Table for Laysan

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Mariscus pennatiformis	X*		X**		X	X				X					*Not enough suitable habitat for 8 to 10 populations at this time. **Subspecies bryanii only known from Laysan.
Pritchardia remota	X*		X		X	X			X			X	X**		*Species is wide ranging.‡ ** Valleys and near freshwater seeps by cliffs.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act means that Federal agencies must evaluate their actions with respect to any proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that the project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion. *See* 50 CFR 402.10(d).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for these five species or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined in the discussion of primary constituent elements including but not limited to: clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting or herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Construction activities by the U.S. Department of Interior (U.S. Fish and Wildlife Service);

(3) Research activities funded by the U.S. Department of Interior (U.S. Fish and Wildlife Service) or National Oceanic and Atmospheric Administration (National Marine Sanctuaries Program, National Marine Fisheries Service); and

(4) Activities not mentioned above funded or authorized by the Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Western Pacific Regional Fisheries Council, or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Avenue, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic and Other Relevant Impacts Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments, and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act.

We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to these listed species.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa;* and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.,* hiking, camping, and birding).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at our Pacific Islands Office.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Taxonomic Changes

At the time we listed *Mariscus pennatiformis* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing we became aware of new taxonomic treatments for this species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical habitat on the Northwestern Hawaiian Islands before we can prepare and publish a notice of taxonomic changes for this species. We plan to publish a taxonomic change notice for this species after we have published the final critical habitat designations on the Northwestern Hawaiian Islands. At that time we will evaluate the critical habitat designations on the Northwestern Hawaiian Islands for this species in light of any changes that may result from taxonomic changes in each species current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

a. While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

safety, or state or local governments or communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency.

Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based upon our experience with these species and their needs, we conclude that most Federal or Federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species. Designation of critical habitat in areas that are not known to be occupied by any of these five species also is highly unlikely to have a significant economic affect because all of the lands proposed as critical habitat are federally owned and managed as part of the Service's national wildlife refuge system. Economic uses on a national wildlife refuge are limited by the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, to activities that are compatible with the purposes of the refuge. We are not aware of any commercial activities occurring on the refuge. Taken with the remove location and inaccessibility of these islands, we believe there will be a few economic impacts resulting from this designation. In addition, each of the 3 units contains occupied habitat for one or more species.

b. We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* since their listing between 1994 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would not be expected to impose any significant additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

c. We do not believe this proposed rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation, will have any significant incremental effects in areas of occupied habitat. However, in those limited cases where activities occur on designated critical habitat where one or more of these five plant species are not found at the time of the action, section 7 consultation may be necessary for actions funded, authorized, or carried out by Federal agencies. Designation of critical habitat in areas that are not known to be occupied by any of these five species will also not likely result in a significant increased regulatory burden because the Service already reviews proposed projects on refuge lands to ensure compatibility with refuge purposes. We will evaluate any additional impacts as part of an economic analysis.

d. OMB has determined that this rule may raise novel legal or policy issues, and as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any

additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these five plant species were listed (between 1994 and 1996), there have been no formal or informal consultations conducted involving these five plant species in NWHI. The NWR system is not a small entity. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities on any of the Northwestern Hawaiian Islands.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. However, only one of the three units (Nihoa) being proposed for designation includes habitat for a species that is not verified to occur there (*Amaranthus brownii*), and three of the species are known to occur there. In addition, while activities within the HINWR may occur within the proposed critical habitat areas for these five plants and therefore have Federal involvement, most of the activities involve natural resources management that is beneficial to the six plants, and therefore would require only informal consultation or reinitiation of already completed consultations for on-going projects. As mentioned above, we have not conducted formal or informal consultations under section 7 involving any of the species. As result, we can not easily identify future consultations that may be due to the listings of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

In the NWHI, all of the designations are on Federal land. All of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of remote locations and lack of access. Also, all of this land is within a National Wildlife Refuge (NWR) where Federal laws and/or policies severely limit development and most activities. We are not aware of any commercial activities occurring on these islands. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

Even where the requirements of section 7 might apply due to critical habitat designation, based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. In the absence of this economic analysis, we believe that the designations would have modest economic impacts because all of the land within the critical habitat units has limited suitability for development, land uses, and activities because of remote locations and lack of access. In addition, these lands are within a National Wildlife Refuge where Federal laws and/or policies severely limit development and activities. The proposed critical habitat designations are expected to cause little or no increase in the number of section 7 consultations; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entitites. It would not affect a substantial number of small entities. None of the lands proposed as critical habitat are on state or private lands. All of the land proposed as critical habitat are Federal lands within the National Wildlife Refuge system. The most likely future section 7 consultation resulting from this rule would be for intra-Service consultations on natural resource management activities, species-specific surveys and research projects. These consultations would not likely affect a substantial number of small entities because the managing agency, the Service, is not a small entity. Therefore we are certifying that the proposed designation of critical habitat for the following species: *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, or should landownership change in the NWHI, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

a. We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical

habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the five species on three islands or atolls (Nihoa, Necker, and Laysan) within the Northwestern Hawaiian Islands. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by these species imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* because Tribal lands do not occur on the three islands or atolls (Nihoa, Necker, and Laysan) within the Northwestern Hawaiian Islands. Therefore, designation of critical habitat for these five species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, Marigold Zoll, and Gregory Koob (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Amaranthus brownii	None	U.S.A. (HI)	Amaranthaceae	E	587	17.96(a)	NA
*	*	*	*	*	*	*	
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Pritchardia remota ..	Loulu	U.S.A. (HI)	Arecaceae	E	587	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea verticilla ..	None	U.S.A. (HI)	Caryophyllaceae	E	587	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*

3. Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002), 67 FR 9806 (March 4, 2002), 67 FR 15856 (April 3, 2002), and 67 FR 16492 (April 5, 2002) is proposed to be further amended as follows:

a. Add paragraph (a)(1)(i)(G) (paragraph (a)(1)(i) introductory text is republished); and

b. Amend paragraph (a)(1)(ii)(A) by adding the entries set forth below.

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

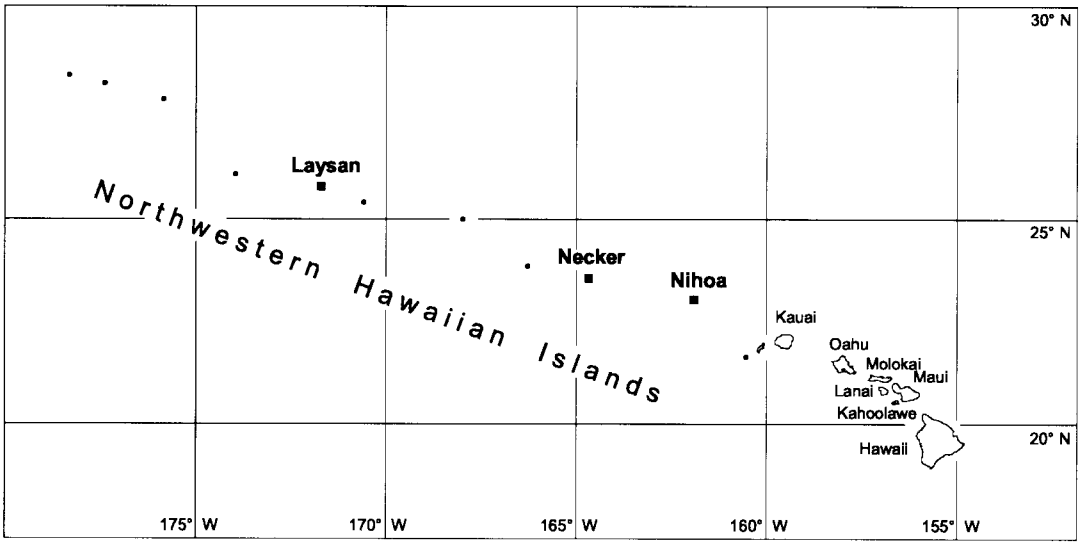
(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing manmade features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

* * * * *

(G) *Northwestern Hawaiian Islands.* Critical habitat areas are described below. Coordinates are in WGS84 datum. The following map shows the general locations of the five critical habitat units designated for the islands of Laysan, Nihoa, and Necker.

(*1*) **Note:** Map 1—Index map follows:

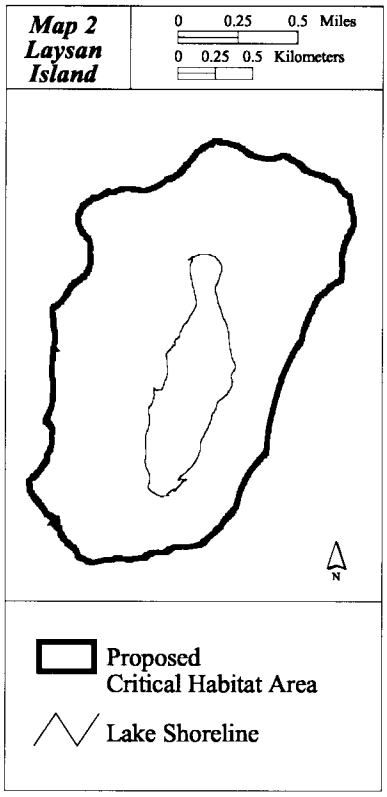
Map 1 - General Locations of Units for Five Species of Plants
Islands of Laysan, Necker, and Nihoa



(*2*) Critical Habitat Nihoa Island—entire island (approximately 69 ha; 171 ac).

(*i*) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

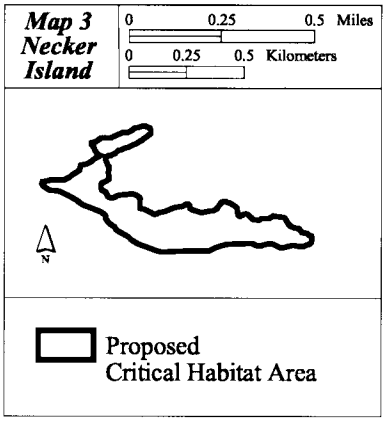
(*ii*) **Note:** Map 2 follows:



(*3*) Critical Habitat Necker Island—entire island (approximately 18 ha; 46 ac).

(*i*) Necker Island is located between 23°34′ N. and 23°35′ N. and between 164°41′ W. and 164°43′ W.

(*ii*) **Note:** Map 3 follows:



(*4*) Critical Habitat Laysan Island—entire island (approximately 411 ha; 1,015 ac).

(*i*) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

(*ii*) **Note:** Map 4 follows:

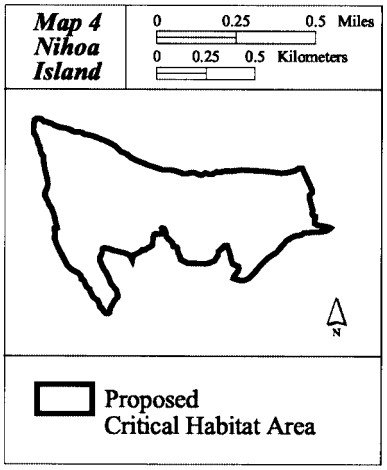


TABLE (a)(1)(i)(G).—PROTECTED SPECIES IN THE NORTHWESTERN HAWAIIAN ISLANDS (NWHI)

Island	Species
Laysan	*Mariscus pennatiformis, Pritchardia remota.*
Necker	*Sesbania tomentosa.*
Nihoa	*Amaranthus brownii, Pritchardia remota, Schiedea verticillata, Sesbania tomentosa.*

(ii) *Hawaiian plants*—constituent elements.

(A) Flowering plants.

Family Amaranthaceae: *Amaranthus brownii* (no common name).

Nihoa Island. Nihoa Island, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Amaranthus brownii.* On this island the currently known primary constituent elements of critical habitat for *Amaranthus brownii* are habitat components that provide:

(*1*) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Schiedea verticillata, Chenopodium oahuense, Ipomoea pes-caprae* ssp. *brasiliensis, Ipomoea indica, Scaevola sericea, Sida fallax, Solanum nelsonii, Sicyos pachycarpus, Eragrostis variabilis,* or *Panicum torridum;* and

(*2*) Elevations between 30 and 242 m (100 and 800 ft).

Family Arecaceae: *Pritchardia remota* (loulu).

Laysan and Nihoa Islands. Laysan and Nihoa islands, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Pritchardia remota.* On these islands the currently known primary constituent elements of critical habitat for *Pritchardia remota* are habitat components that provide:

(*1*) *Pritchardia remota* coastal forest community containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Solanum nelsonii,* or *Sida fallax;* and

(*2*) From 15 to 151 m (50 to 500 ft) in elevation.

Family Caryophyllaceae: *Schiedea verticillata* (no common name).

Nihoa Island. Nihoa Island, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Schiedea verticillata.* On this island the currently known primary constituent elements of critical habitat for *Schiedea verticillata* are habitat components that provide:

(*1*) Rocky scree, soil pockets and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Tribulus cistoides, Eragrostis*

variabilis, Rumex albescens, or *lichens;* and

(*2*) Elevations between 30 and 242 m (100 and 800 ft).

Family Cyperaceae: *Mariscus pennatiformis* (no common name).

Laysan Island. Laysan Island, identified in the legal description in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Mariscus pennatiformis.* On this island the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* are habitat components that provide:

(*1*) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis,* or *Ipomoea* sp.; and

(*2*) Elevation of 5 m (16 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai).

Nihoa and Necker Islands. Nihoa and Necker islands, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitute critical habitat for *Sesbania tomentosa.* On these islands, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* are habitat components that provide:

(*1*) Shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland and containing one or more of the following associated native plant species: *Sida fallax, Scaevola sericea, Solanum nelsonii,* or *Pritchardia remota;* and

(*2*) Elevations between sea level and 84 m (0 and 276 ft).

Dated: April 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11225 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
May 14, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7207–8]

RIN 2060–A174

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands. We have identified engine test cells/stands as major sources of hazardous air pollutants (HAP) such as toluene, benzene, mixed xylenes, and 1,3-butadiene. These proposed NESHAP will implement section 112(d) of the Clean Air Act (CAA) which requires all major sources of HAP to meet emission standards reflecting the application of the maximum achievable control technology (MACT). These proposed standards will protect public health by reducing exposure to air pollution.

DATES: *Comments.* Submit comments on or before July 15, 2002.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by June 3, 2002, we will hold a public hearing on June 13, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–29, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–29, U.S. EPA, 401 M Street, SW, Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–98–29 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–0942; electronic mail (e-mail) address ''pagan.jaime@epa.gov.''

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems or on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must note the docket number: A–98–29. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Jaime Pagan, c/o OAQPS Document Control Officer, U.S. EPA, 411 W. Chapel Hill Street, Room 740B, Durham NC 27701. We will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mrs. Kelly Hayes, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5578 at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing should also call Mrs. Kelly Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information we considered in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket (except for interagency review materials) will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) Materials related to this proposed rule are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

A list of combustion related rules is available on the Combustion Group Website on the TTN at *http://www.epa.gov/ttn/uatw/combust/list.html.* You may obtain background information, technical documents, and a docket index on these combustion related rules.

Regulated Entities. Subcategories and entities potentially regulated by this action include those listed in Table 1 of this preamble. In general, engine test cells/stands are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1 of this preamble. However, cells/stands classified under other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all cells/stands classified under the SIC and NAICS codes in Table 1 of this preamble will be subject to the proposed standards because some of the classifications cover products outside the scope of the proposed NESHAP for engine test cells/stands.

TABLE 1.—SUBCATEGORIES POTENTIALLY REGULATED BY THIS STANDARD

Test cells/stands used for testing	SIC codes	NAICS codes	Examples of regulated entities
Internal Combustion Engines with rated power of 25 horsepower (hp) (19 kilowatts (kW)) or more.	3531, 3519, 3523, 3559, 3599, 3621, 3711, 3714, 4226, 4512, 5541, 7538, 7539, 8299, 8711, 8731, 8734, 8741.	333120, 333618, 333111, 333319, 335312, 336111, 336120, 336112, 336992, 336312, 336350, 481111, 811111, 811118, 611692, 54171, 541380.	Test cells/stands used for testing internal combustion engines with rated power of 25 hp (19 kW) or more.
Internal Combustion Engines with rated power of less than 25 hp (19 kW).	3519, 3621, 3524, 8734	333618, 336399, 335312, 332212, 333112, 541380.	Test cells/stands used for testing internal combustion engines with rated power of less than 25 hp (19 kW).
Combustion Turbine Engines	3511, 3566, 3721, 3724, 4512, 4581, 7699, 9661.	333611, 333612, 336411, 336412, 481111, 488190, 811310, 811411, 92711.	Test cells/stands used for testing combustion turbine engines.
Rocket Engines	3724, 3761, 3764, 9661, 9711	336412, 336414, 336415, 54171, 92711, 92811.	Test cells/stands used for testing rocket engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine test cell/stand is regulated by this action, you should examine the applicability criteria in § 63.9285 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria did we use in the development of NESHAP?
C. What are the health effects associated with HAP from engine test cells/stands?
II. Summary of the Proposed Rule
A. Am I subject to this proposed rule?
B. What source categories and subcategories are affected by this proposed rule?
C. What are the primary sources of HAP emissions and what are the emissions?
D. What are the emission limitations?
E. What are the initial compliance requirements?
F. What are the continuous compliance provisions?
G. What monitoring and testing methods are available to measure low concentrations of CO?
H. What are the notification, recordkeeping and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and any subcategories?
B. What about engine test cells/stands located at area sources?
C. What is the affected source?
D. How did we determine the basis and level of the proposed emission limitations?
E. How did we select the format of the standard?
F. How did we select the initial compliance requirements?
G. How did we select the continuous compliance requirements?
H. How did we select the monitoring and testing methods?
I. How did we select the notification, recordkeeping and reporting requirements?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Engine test facilities were listed as a source category under the fuel combustion industry group, and rocket engine test firing was listed as a source category under the miscellaneous processes industry group in the **Federal Register** on July 16, 1992 (57 FR 31576). Today, we are combining these two source categories for regulatory purposes under the fuel combustion industry group and renaming the source category as engine test cells/stands. The next revision to the source category list under section 112 which is published in the **Federal Register** will reflect this change. Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Did We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower-emitting sources in each source category or

subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP From Engine Test Cells/Stands?

Emission data collected during development of the proposed NESHAP show that several HAP are emitted from engine test cells/stands. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned. Numerous HAP are emitted from combustion in engine test cells/stands; examples include toluene, benzene, mixed xylenes, and 1,3-butadiene.

The health effect of primary concern for toluene is dysfunction of the central nervous system (CNS). Toluene vapor also causes narcosis. Controlled exposure of human subjects produced mild fatigue, weakness, confusion, lacrimation, and paresthesia; at higher exposure levels there were also euphoria, headache, dizziness, dilated pupils, and nausea. After effects included nervousness, muscular fatigue, and insomnia persisting for several days. Acute exposure may cause irritation of the eyes, respiratory tract, and skin. It may also cause fatigue, weakness, confusion, headache, and drowsiness. Very high concentrations may cause unconsciousness and death.

Benzene is a known human carcinogen. The health effects of benzene include nerve inflammation, CNS depression, and cardiac sensitization. Chronic exposure to benzene can cause fatigue, nervousness, irritability, blurred vision, and labored breathing and has produced anorexia and irreversible injury to the blood-forming organs; effects include aplastic anemia and leukemia. Acute exposure can cause dizziness, euphoria, giddiness, headache, nausea, staggering gait, weakness, drowsiness, respiratory irritation, pulmonary edema, pneumonia, gastrointestinal irritation, convulsions, and paralysis. Benzene can also cause irritation to the skin, eyes, and mucous membranes.

Acute inhalation exposure to mixed xylenes in humans results in irritation of the nose and throat, gastrointestinal effects such as nausea, vomiting, and gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation exposure of humans to mixed xylenes results primarily in CNS effects, such as headache, dizziness, fatigue, tremors and incoordination. Other effects noted include labored breathing and impaired pulmonary function, increased heart palpitation, severe chest pain and an abnormal electrocardiogram, and possible effects on blood and kidneys.

Acute exposure to 1,3-butadiene by inhalation in humans results in irritation of the eyes, nasal passages, throat, and lungs, and causes neurological effects such as blurred vision, fatigue, headache, and vertigo. Epidemiological studies have reported a possible association between 1,3-butadiene exposure and cardiovascular diseases. The Department of Health and Human Services has determined that 1,3-butadiene may reasonably be anticipated to be a carcinogen. This is based on animal studies that found increases in a variety of tumor types from exposure to 1,3-butadiene. Studies on workers are inconclusive because the workers were exposed to other chemicals in addition to 1,3-butadiene.

II. Summary of the Proposed Rule

A. Am I Subject to This Proposed Rule?

This proposed rule applies to you if you own or operate an engine test cell/stand which is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Each new or reconstructed engine test cell/stand used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more which is located at a major source of HAP emissions must comply with the requirements in this proposed rule. New or reconstructed test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) are not required to comply with the emission limitation in this proposed rule, but are required to submit an Initial Notification upon startup of the test cells/stands.

New or reconstructed test cells/stands used for testing combustion turbine engines or new or reconstructed test cells/stands used for testing rocket engines are not required to comply with the emission limitation or the recordkeeping or reporting requirements in this proposed rule.

Existing engine test cells/stands that are located at major sources of HAP emissions are not required to comply with the emission limitation or the recordkeeping or reporting requirements in this proposed rule.

This proposed rule also does not apply to engine test cells/stands that are located at area sources of HAP emissions. An area source is any source that is not a major source of HAP emissions.

B. What Source Categories and Subcategories Are Affected by This Proposed Rule?

This proposed rule covers four subcategories of engine test cells/stands located at major source facilities: (1) Cells/stands used for testing internal combustion engines with rated power of 25 hp (19 kW) or more, (2) cells/stands used for testing internal combustion engines with rated power of less than 25 hp, (3) cells/stands used for testing combustion turbine engines, and (4) cells/stands used for testing rocket engines. The rated power criteria for distinguishing between the two internal combustion engine subcategories is based on the largest engine (in terms of rated power) that is tested in the test cell/stand.

C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The sources of emissions are the exhaust gases from combustion of fuels in the engines being tested in the test cells/stands. Some of the HAP present in the exhaust gases from engine test cells/stands are toluene, benzene, mixed xylenes, and 1,3-butadiene.

D. What Are the Emission Limitations?

As the owner or operator of a new or reconstructed test cell/stand used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions, you must comply with one of the following two emission limitations by [3 YEARS FROM PUBLICATION OF THE FINAL

RULE IN THE **Federal Register**] (or upon startup if you start up your engine test cell/stand after [3 YEARS FROM PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]: (1) Reduce CO emissions in the exhaust from the new or reconstructed engine test cell/stand to 5 parts per million by volume dry basis (ppmvd) or less, at 15 percent oxygen (O_2) content; or (2) reduce CO emissions in the exhaust from the new or reconstructed engine test cell/stand by 99.9 percent or more. Existing test cells/stands used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions are not required to comply with the emission limitations.

Finally, as mentioned earlier, new or reconstructed test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), new or reconstructed test cells/stands used for testing combustion turbine engines, and new or reconstructed test cells/stands used for testing rocket engines are not required to comply with either emission limitation. In addition, neither existing test cells/stands located at major sources of HAP emissions nor new, reconstructed, or existing test cells/stands located at area sources of HAP emissions are required to comply with the emission limitations.

E. What Are the Initial Compliance Requirements?

Your initial compliance requirements are different depending on whether you demonstrate compliance with the outlet CO concentration emission limitation or the percent CO reduction emission limitation. If you choose to comply with the outlet CO concentration emission limitation, you must install a CEMS to measure CO and O_2 at the outlet of the test cell/stand or emission control device. To demonstrate initial compliance, you must conduct an initial performance evaluation using Performance Specifications (PS) 3 and PS4A of 40 CFR part 60, appendix B. This initial performance evaluation demonstrates that your CEMS is working properly. You must demonstrate that the outlet concentration of CO emissions from the test cell/stand or emission control device is 5 ppmvd or less, corrected to 15 percent O_2 content, using the first 4-hour rolling average after a successful performance evaluation.

If you comply with the percent reduction emission limitation, you must install two CEMS to measure CO and O_2 simultaneously at the inlet and outlet of the emission control device. You must conduct an initial performance evaluation using PS3 and PS4A of 40 CFR part 60, appendix B. The initial performance evaluation demonstrates that your CEMS are working properly. You must demonstrate that the reduction in CO emissions is at least 99.9 percent using the first 4-hour rolling average after a successful performance evaluation. Your inlet and outlet measurements must be on a dry basis and corrected to 15 percent O_2 content.

F. What Are the Continuous Compliance Provisions?

Several general continuous compliance requirements apply to engine test cells/stands required to comply with the applicable emission limitation. You are required to comply with the applicable emission limitation at all times, including startup, shutdown, and malfunction of your engine test cell/stand. You must operate and maintain your air pollution control equipment and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct monitoring at all times that the engine test cell/stand is in operation except during periods of malfunction of the monitoring equipment or necessary repairs and quality assurance or control activities, such as calibration drift checks.

To demonstrate continuous compliance with the outlet CO concentration emission limitation, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO and O_2 concentrations at the outlet of the test cell/stand or emission control device and calculate the CO emission concentration for each hour. Then, the hourly CO emission concentrations for each hour of the 4-hour compliance period are averaged together. The outlet CO emission concentration must be 5 ppmvd or less, corrected to 15 percent O_2 content, based on the 4-hour rolling average, averaged every hour.

To demonstrate continuous compliance with the percent reduction emission limitation, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO and O_2 concentration before and after the emission control device and calculate the percent reduction in CO emissions hourly. The reduction in CO emissions must be 99.9 percent or more, based on a rolling 4-hour average, averaged every hour.

For both emission limitations, you must also follow Procedure 1 of 40 CFR part 60, appendix F, to verify that the CEMS is working properly over time.

G. What Monitoring and Testing Methods Are Available to Measure Low Concentrations of CO?

Continuous emission monitoring systems are available which can measure CO emissions accurately at the low concentrations found in the exhaust stream of an engine test cell/stand following an emission control device. Our performance specification for CO CEMS (PS4A) of 40 CFR part 60, appendix A, however, has not been updated recently and does not reflect the performance capabilities of newer systems. We are currently undertaking a review of PS4A of 40 CFR part 60, appendix A for CO CEMS and, in conjunction with this effort, we solicit comments on the performance capabilities of CO CEMS and their ability to measure accurately the low concentrations of CO experienced in the exhaust of an engine test cell/stand following an emission control device.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

You must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance evaluation, and a notification of compliance status for each engine test cell/stand required to comply with the emission limitations.

You must submit an initial notification for each new or reconstructed test cell/stand located at a major source of HAP emissions used for testing internal combustion engines with a rated power of less than 25 hp (19 kW).

You must record all of the data necessary to determine if you are in compliance with the applicable emission limitation. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, report, or record. Records must remain on site for at least 2 years and then can be maintained off site for the remaining 3 years.

You must submit a compliance report semiannually for each engine test cell/stand required to comply with the applicable emission limitation. This report must contain the company name and address, a statement by a responsible official that the report is accurate, a statement of compliance, or documentation of any deviation from

the requirements of this proposed rule during the reporting period.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Any Subcategories?

Engine test cells/stands can be major sources of HAP emissions and, as a result, we listed them as a major source category for regulatory development under section 112 of the CAA. Section 112 of the CAA allows us to establish subcategories within a source category for the purpose of regulation. Consequently, we evaluated several criteria associated with engine test cells/stands which might serve as potential subcategories.

We identified four subcategories of engine test cells/stands located at major source facilities: (1) Test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, (2) test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), (3) test cells/stands used for testing combustion turbine engines, and (4) test cells/stands used for testing rocket engines.

Internal combustion engines, which can be classified as reciprocating or rotary, convert thermal energy into mechanical energy. In an internal combustion engine, a combustible fuel-air mixture is intermittently ignited and combusted in a confined space. The force exerted by the expanding gases from this combustion is used to turn a shaft and provide mechanical power.

An internal combustion engine intakes a mixture of fuel and air, the mixture is ignited and combusted, and the combustion gases are exhausted from the engine. This cycle of intake, ignition/combustion, and exhaust is repeated over and over.

The cyclical nature of the combustion process in an internal combustion engine is quite different from the combustion processes in combustion turbine and rocket engines, where the combustion process is more continuous in nature. Therefore, test cells/stands used for testing internal combustion engines are considered a separate subcategory.

Internal combustion engines are used for a wide range of applications, including motor vehicles (automobiles and motorcycles), marine, heavy-duty diesel (trucks and buses), locomotive, and a wide variety of nonroad equipment (agriculture, construction, general industrial, lawn and garden, utility, material handling, electric power generation, and along gas and oil pipelines). Internal combustion engines range in size from a rated power of less than one hp to more than 15,000 hp.

Engines with a rated power of less than 25 hp (19 kW) generally include those used in handheld equipment (chainsaws, string trimmers, and blowers) and lawn and garden equipment. Engines with a rated power of 25 hp (19 kW) or more, on the other hand, generally include those used in automobiles, trucks, motorcycles, all-terrain vehicles, forklifts, generators, compressors, snowmobiles, airport ground-service equipment, marine engines, heavy-duty construction equipment, electric power generation, etc. While not perfect, a rated power of 25 hp (19 kW) generally serves to distinguish between smaller internal combustion engines, which tend to be used in handheld equipment, and larger internal combustion engines, which tend to be used in non-handheld equipment. In addition, internal combustion engines with a rated power of less than 25 hp (19 kW) generally use gasoline as the primary fuel, whereas larger internal combustion engines can use a wide variety of fuels such as gasoline, diesel fuel, natural gas, liquified petroleum gas, sewage (digester) gas, or landfill gases.

These factors suggest that internal combustion engines with a rated power of 25 hp (19 kW) or more should be considered a separate subcategory from internal combustion engines with a rated power of less than 25 hp (19 kW). Indeed, the advance notice of rulemaking for Nonroad Engines and Highway Motorcycles (65 FR 76796, December 7, 2000) and the Nonroad Handheld Spark-Ignition Engines rulemaking (65 FR 24267, April 25, 2000), used a rated power criteria of 25 hp (19 kW) to distinguish between larger engines and smaller engines. Thus, a rated power of 25 hp (19 kW) provides an effective way of dividing internal combustion engines into two subcategories which recognizes the significant differences between larger and smaller engines.

Consequently, test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more and test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) are considered two separate subcategories of test cells/stands used for testing internal combustion engines.

In addition to these two subcategories of engine test cells/stands, we identified test cells/stands used for testing combustion turbine engines as a third subcategory. Combustion turbine engines are fuel-fired devices in which a continuous stream of hot combustion gases passes through and turns a turbine rotor that produces shaft power. Depending on whether or not the heat can be utilized, the hot exhaust gases are either emitted directly to the atmosphere or passed through a heat recovery device which extracts excess heat from the exhaust gases. Applications for these types of engines include aircraft (including turbines, turboprops, turbofans, turbojets, and propfans), other military applications (tanks and ships), auxiliary power units, power and electric generation, pumping gas or other fluids (e.g., pipelines), and pneumatic machinery.

In general, combustion turbine engines have much higher power ratings (e.g., in the range of 500 hp to 240,000 hp or 373 kW to 178,968 kW) and require much larger volumes of air to operate than internal combustion engines. As a result, the volumes of exhaust from test cells/stands used for testing combustion turbine engines are substantially greater than those from test cells/stands used for testing internal combustion engines. A typical jet engine combustion turbine, for example, with a rated power of 4,600 hp (3,500 kW) requires air flows of approximately 125,000 dry standard cubic feet per minute (dscfm), and a large power generation combustion turbine engine with a rated power of 200,000 hp (150 megawatts (MW)) can require air flows of as much as 2 million dscfm, compared to a typical airflow of 500 dscfm for an automobile engine. Also, most combustion turbine engines burn natural gas or jet fuel, while, as mentioned above, the larger internal combustion engines can burn a wide variety of fuels, and the smaller internal combustion engines generally burn gasoline. In addition, separate test cells/stands are used for testing internal combustion engines and combustion turbine engines. Consequently, test cells/stands used for testing combustion turbine engines are considered a separate subcategory.

Lastly, we identified test cells/stands used for testing rocket engines as a fourth subcategory. Rocket engines are used to launch or propel rockets and missiles through the air or into space. The working fluid expelled from a rocket-propelled vehicle is usually a hot, burning gas resulting from the combustion of chemical propellants. The hot reaction-product gases are ejected at a high velocity to impart momentum to the rocket vehicle system. Propellants are of several different types, classified according to their chemical and physical properties and the rocket engine type. Liquid

propellants are either expelled from the tanks by high pressure gases or are fed by pumps into a thrust chamber, where they react or burn. Solid propellants look like masses of soft plastic and burn smoothly on the exposed surfaces when ignited.

Not only are the fuels used in rocket engines quite different from other engine subcategories, but the volumetric energy release associated with these fuels are orders of magnitude higher than those used in either combustion turbine engines or internal combustion engines. This produces much greater temperatures and pressures in the combustion chambers and releases a much greater volume of exhaust. Consequently, test cells/stands used for testing rocket engines are considered a separate subcategory.

B. What About Engine Test Cells/Stands Located at Area Sources?

This proposed rule does not apply to engine test cells/stands located at area sources of HAP emissions. In developing our Urban Air Toxics Strategy (64 FR 38705, July 19, 1999), we identified area sources we believe warrant regulation to protect the environment and the public health and to satisfy the statutory requirements in section 112 of the CAA pertaining to area sources. Engine test cells/stands located at area sources were not included on that list and as a result, this proposed rule does not apply to engine test cells/stands located at area sources.

C. What Is the Affected Source?

This proposed rule applies to each affected source, which is defined as any existing, new, or reconstructed engine test cell/stand used for testing uninstalled stationary or uninstalled mobile (motive) engines that is located at a major source of HAP emissions.

D. How Did We Determine the Basis and Level of the Proposed Emission Limitations?

To determine the basis and level of the proposed emission limitations, we relied primarily on two sources: a MACT database and HAP emissions test reports. The MACT database is a summary of the information collected through an information collection request (ICR) for engine test cells/stands located at major and synthetic minor sources of HAP emissions. The HAP emissions test reports were collected from engine test facilities.

As established in section 112 of the CAA, MACT standards must be no less stringent than the MACT floor, which for existing sources is the average emission limitation achieved by the best performing 12 percent of existing sources. For new sources, the MACT floor is defined as the emission control that is achieved in practice by the best controlled similar source.

1. Test Cells/Stands Used for Testing Internal Combustion Engines of 25 hp (19 kW) or More

To determine MACT for test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, we used data from the MACT database. The database contains information on approximately 1,093 test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more from major source and synthetic minor facilities. Since this number includes 1,055 test cells/stands from major source facilities and we estimate the total number of test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities to be about 1,995, we estimate that the MACT database represents approximately 52 percent of test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control methods to reduce HAP emissions. First, we examined the use of control technology. Oxidation emission control devices, such as thermal and catalytic oxidizers, have been shown to reduce HAP emissions from test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more. These oxidation emission control devices have been installed to reduce CO emissions, but they also serve to reduce HAP emissions. Only 5 percent of existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, however, are equipped with oxidation emission control devices.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations or permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to ''good operating practices'' or ''work practice standards'' in the MACT database and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations or permits, or good operating practices might identify a MACT floor, we also considered whether other alternatives, such as the use of a specific fuel which might result in lower HAP emissions (e.g., switching from diesel fuel to gasoline) might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment. This may be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a new diesel engine design by burning gasoline in the engine, for example, nor could one test the performance and durability of a new gasoline engine design by burning diesel fuel in the engine. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for engine testing; indeed, such an alternative would defeat the very purpose of engine testing. For this reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine test cells/stands.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major sources is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing internal

combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, we evaluated one regulatory option more stringent than the MACT floor. This regulatory option was the use of oxidation emission control devices. We also reconsidered the alternatives mentioned above, such as reviewing State permits and regulations, good operating practices and work practice standards, and using different fuels (also referred to as fuel switching). Again, we concluded that they are not viable options for MACT.

We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced associated with the use of oxidation emission control devices. Those analyses are shown in a memorandum in Docket A–98–29, titled ''Control Costs.'' In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result.

We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, we concluded that MACT for existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, we examined the MACT database and the emission test reports. As mentioned earlier, about 5 percent of existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more currently use oxidation emission control devices.

We also considered whether the alternatives mentioned above, such as reviewing State permits and regulations, good operating practices and work practice standards, and using different fuels, which we considered to identify a MACT floor for existing test cells/stands, might identify a MACT floor for new engine test cells/stands. However, we concluded that just as none of those alternatives could be used to identify a MACT floor for existing engine test cells/stands, neither could they be used to identify a MACT floor for new engine test cells/stands.

Therefore, we concluded that the HAP emission limitation associated with the use of oxidation emission control devices is the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities.

To determine MACT for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, we considered options more stringent than the MACT floor, such as good operating practices and work practice standards, fuel switching, and the review of State permits and regulations to determine if other methods of control were being used. We are unaware of any option, including the alternatives just mentioned, which could reduce HAP emissions from a test cell/stand used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more beyond that obtained through the use of an oxidation emission control device.

Consequently, we concluded that MACT for new sources is the MACT floor. As a result, MACT for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more is the HAP emission level associated with the use of oxidation emission control devices.

After establishing this basis for MACT, we determined the achievable emission limitation based on the data available from HAP emission test reports of the performance of oxidation emission control devices operating on engine test cells/stands. We examined the emission control efficiencies achieved by oxidation emission control devices and concluded that CO emission reductions are a good surrogate for HAP emissions reductions. In addition, we concluded that oxidation emission control devices can reduce CO emissions to 5 ppmvd or less, corrected to 15 percent O_2 content, while achieving a CO reduction efficiency of 99.9 percent or more. Thus, we are proposing the following MACT emission limitation for test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more: an outlet CO emissions concentration of 5 ppmvd or less, corrected to 15 percent O_2 content; or a reduction in CO emissions of 99.9 percent or more.

2. Test Cells/Stands Used for Testing Internal Combustion Engines of Less Than 25 hp (19 kW)

To determine MACT for test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), we used data from the MACT database. The database contains information on 307 test cells/stands used exclusively for testing internal combustion engines with a rated power of less than 25 hp (19 kW) from major source and synthetic minor source facilities. Since this number includes 219 test cells/stands from major source facilities, and we estimate the number of test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities to be about 403, we estimate this database represents about 54 percent of test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various control methods to reduce HAP emissions. First, we examined the use of control technology. No existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities are equipped with emission control technologies.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations and permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to ''good operating practices'' or ''work practice standards'' in the MACT database, and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards

can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations and permits, or good operating practices might identify a MACT floor, we also considered whether other alternatives, such as the use of a specific fuel which might result in lower HAP emissions (e.g., switching from diesel fuel to gasoline) might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment, which could be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a new diesel engine design by burning gasoline in the engine, for example, nor could one test the performance and durability of a new gasoline engine design by burning diesel fuel in the engine. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for engine testing; indeed, such an alternative would defeat the very purpose of engine testing. For that reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine test cells/stands.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities, we evaluated regulatory options more stringent than the MACT floor. We considered the use of oxidation emission control devices as an emission control technology which could serve as the basis for MACT for existing sources. We also reconsidered alternatives, such as good operating practices and work practice standards, fuel switching, and the review of State permits and regulations, and again concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for this regulatory option. Those analyses are shown in a memorandum in Docket A–98–29, titled ''Control Costs.'' In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result.

We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, we concluded that MACT for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies, such as oxidation emission control systems, might identify a MACT floor, we also considered whether any of the alternatives outlined above (e.g., good operating practices and work practice standards, fuel switching, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), might identify a MACT floor for new engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW). Again, we concluded that none of the alternatives could be used to identify a MACT floor for existing engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW).

Therefore, we concluded that the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

To determine MACT for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), we evaluated regulatory options more stringent than the MACT floor. We considered the use of oxidation emission control devices as an emission control technology which could serve as the basis for MACT for new sources. We also reconsidered the alternatives mentioned above (*e.g.,* good operating practices and work practice standards, fuel switching, and the review of State permits and regulations), which we considered for identifying a MACT floor, but for the reasons also discussed above, we concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced associated with the option of adding oxidation emission control devices. In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with adding an oxidation emission control device were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for new sources is the MACT floor. Consequently, we concluded that MACT for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

3. Test Cells/Stands Used for Testing Combustion Turbine Engines

To determine MACT for test cells/stands used for testing combustion turbine engines, we used data from the MACT database. The database contains information on 287 test cells/stands used for testing combustion turbine engines from major source and synthetic minor source facilities. Since this number includes 252 test cells/stands from major source facilities, and we estimate the number of test cells/stands used for testing combustion turbine engines located at major source facilities to be about 328, we estimate this database represents about 77 percent of

test cells/stands used for testing combustion turbine engines located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing combustion turbine engines located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control methods to reduce HAP emissions. First, we examined the use of control technology. No existing test cells/stands used for testing combustion turbine engines located at major source facilities are equipped with emission control technologies.

In addition to considering whether the use of add-on emission control technologies, such as oxidation emission control systems, might identify a MACT floor, we also considered whether any of the alternatives mentioned above (*e.g.* good operating practices and work practice standards, fuel switching, and the review of State permits and regulations) might identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines. We were unable to find any good operating practices or work practice standards that result in HAP reductions. Similarly, fuel switching is not a viable alternative since the engine performance and durability being measured to simulate actual in-use conditions can be affected by the type of fuel used. Finally, as we mentioned before, our review of State permits and regulations did not identify any emission control strategies for that type of source. Thus, we conclude again that none of those alternatives could be used to help us identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing combustion turbine engines located at major source facilities, we evaluated regulatory options more stringent than the MACT floor. The only control technology currently proven to reduce HAP emissions from combustion turbine engines is an oxidation catalyst emission control device, such as a CO oxidation catalyst. These control devices are used to reduce CO emissions and are currently installed on several stationary combustion turbine engines. As a result, we concluded they could be used on test cells/stands used for testing combustion turbine engines.

We also reconsidered the same alternatives that we looked at for identifying a MACT floor (*e.g.,* fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), and again concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for the use of an oxidation catalyst emission control device. Those analyses are shown in a memorandum in Docket A–98–29, titled ''Control Costs.'' In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that the costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, we concluded that MACT for existing test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing combustion turbine engines located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing combustion turbine engines currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies might identify a MACT floor, we also considered whether any of the alternatives outlined above (*e.g.,* fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines, might identify a MACT floor for new engine test cells/stands used for testing combustion turbine engines. We were unable to find any good operating practices or work practice standards that result in HAP reductions. Similarly, fuel switching is not a viable alternative since the engine performance and durability being measured to simulate actual in-use conditions can be affected by the type of fuel used. Finally, as we mentioned before, our review of State permits and regulations did not identify any emission control strategies for that type of source. Thus, we have concluded that none of those alternatives could be used to identify a MACT floor for new engine test cells/stands used for testing combustion turbine engines.

Therefore, we concluded that the MACT floor for new test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for new test cells/stands used for testing combustion turbine engines, we evaluated regulatory options more stringent than the MACT floor. We again considered the use of an oxidation catalyst emission control device as an emission control technology which could serve as the basis for MACT for new sources. We also reconsidered the alternatives mentioned above (*e.g.,* fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered for identifying a MACT floor, but for the same reasons, we concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for this regulatory option. Those analyses are shown in a memorandum in Docket A–98–29, titled ''Control Costs.'' In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for new sources is the MACT floor. Consequently, we concluded that MACT for new test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

4. Test Cells/Stands Used for Testing Rocket Engines

To determine MACT for test cells/stands used for testing rocket engines, we used data from the MACT database. The database contains information on 99 test cells/stands used for testing rocket engines from major source and synthetic minor source facilities. Since this number includes 75 test cells/stands from major source facilities and we estimate the number of test cells/stands used for testing rocket engines located at major source facilities to be about 100, we estimate this database represents about 75 percent of test cells/stands used for testing rocket engines located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing rocket engines located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control systems. First, we examined the use of control technology. No existing test cells/stands used for testing rocket engines located at major source facilities are equipped with emission control technologies.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations and permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to ''good operating practices'' or ''work practice standards'' in the MACT database, and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations and permits, and good operating practices might identify a MACT floor, we also considered whether other alternatives such as the use of a specific fuel which might result in lower HAP emissions might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment, which could be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a rocket engine design by burning a fuel other than the one it is designed to use. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for rocket engine testing; indeed, such an alternative would defeat the very purpose of the testing. For that reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine cells/stands used for testing rocket engines.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing rocket engines located at major source facilities, we attempted to identify regulatory options more stringent than the MACT floor. We are unaware of any emission control technology which could be used to reduce HAP emissions from a test cell/stand used for testing rocket engines.

We also reconsidered the alternatives mentioned above, which we considered for identifying a MACT floor (*e.g.,* fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), but for the reasons also discussed above, we concluded they are not viable options for MACT. We were unable to identify any feasible regulatory options.

A number of characteristics of the exhaust from rocket engine testing (extremely high temperatures, extremely high volumetric flow rates, and very short test durations) and the infrequent timing of testing raise a number of unique problems that must be resolved for an emission control device to be considered a viable option for reducing HAP emissions from test cells/stands used for testing rocket engines. Consequently, we could identify no candidate MACT technologies for analysis. Without a viable emission control device, we are unable to estimate the potential costs associated with its use. Similarly, we are unable to estimate the potential reduction in HAP emissions which might result from the use of such a device.

Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, MACT for existing test cells/stands used for testing rocket engines is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing rocket engines located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing rocket engines currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies might identify a MACT floor, we also considered whether any of the alternatives outlined above (*e.g.,* fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing rocket engines, might identify a MACT floor for new engine test cells/stands used for testing rocket engines. Again, we concluded that none of these alternatives could be used to identify a MACT floor for new engine test cells/stands used for testing rocket engines.

Therefore, we concluded that the MACT floor for new test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

We also considered regulatory options more stringent than the MACT floor. As explained in the previous paragraphs, we were unable to identify any emission control technology which could be used to reduce HAP emissions from a test cell/stand used for testing rocket engines. Thus, we concluded that MACT for new sources is the MACT floor, and we concluded that MACT for new test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

E. How Did We Select the Format of the Standard?

The HAP emissions test reports which serve as the basis for the MACT emission limitations did not measure specific HAP, such as toluene, benzene, mixed xylenes, or 1,3-butadiene, etc. They measured CO emissions and, in most cases, they also measured total hydrocarbon (THC) emissions. In one case, emissions of non-methane organics (NMO) were also measured.

The HAP emitted from engine test cells/stands are hydrocarbons, as well as organics. As a result, if HAP emissions decrease, emissions of THC and NMO will decrease as well. Consequently, the measurements of THC or NMO emissions serve as surrogate measurements of HAP emissions, and we assessed the HAP emissions reduction performance of the oxidation emission control devices in terms of reductions in THC or NMO emissions.

In addition, the data from these HAP emissions test reports also demonstrate a direct relationship between emissions of CO and THC or NMO. If emissions of THC or NMO are reduced, CO emissions are also reduced. As a result, we concluded that CO emissions could also serve as a surrogate for HAP emissions, and we also assessed the HAP emissions reduction performance of the oxidation emission control devices in terms of reductions in CO emissions.

We considered three alternatives in terms of the format for the MACT emission limitations. We could have proposed the emission limitation in terms of THC, NMO, or CO emissions; however, there was only one emission test report available which measured NMO emissions, so we rejected the alternative of an emission limitation in terms of NMO emissions in favor of an emission limitation in terms of either THC or CO emissions.

As outlined earlier, we are proposing a MACT emission limitation in terms of CO emissions. We could have proposed an emission limitation in terms of THC emissions, but chose CO emissions primarily because the costs for CO CEMS are somewhat less than those for THC CEMS. However, since these costs are within the same range, some may prefer a MACT emission limitation in terms of THC, or they may prefer a choice of either the THC or CO emission limitation.

As a result, we specifically request public comment in this area. If we were to adopt a THC MACT emission limitation in place of the proposed CO emission limitation, or if we were to adopt a THC emission limitation in addition to the proposed CO emission limitation and allow affected sources to comply with either the THC or the CO emission limitation, based on the HAP emissions test reports mentioned above, we anticipate that the corresponding THC MACT emission limitation would be: An outlet THC concentration of 3 ppmvd or less, expressed as methane and corrected to 15 percent O_2; or a reduction in THC emissions of 99.7 percent.

We recognize that this proposal will be of limited significance because it would require emission reductions from new major sources for only one of the four subcategories identified and that, standing alone, these new sources will likely have low HAP emissions. We nonetheless believe promulgation of standards for this source category is compelled by the Act. Section 112(a) defines ''major source'' as ''any stationary source or group of stationary sources located within a contiguous area and under common control, that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.'' Thus, sources are considered part of a major source when they are collocated with other sources at facilities that in combination have the potential to emit over the major source thresholds. Because the statute is clear that such collocated sources must be considered major, we believe it is also clear in the statute that we must list categories that include such sources and promulgate standards for those categories pursuant to section 112(d).

In the interest of providing as much compliance flexibility as possible to these sources, we request comments on the possibility of averaging emissions across processes throughout the entire major source and allowing reductions from emission points covered by other MACT standards, within the facility, to be counted towards the emission limitations proposed in this action. Comments should include ideas on how such averaging scheme would work and be implemented. This type of provision, if implemented, could allow flexibility for the affected facility to determine an effective emission control strategy while, at the same time, achieving the emission reductions intended by this proposal.

F. How Did We Select the Initial Compliance Requirements?

We are proposing the use of CO and O_2 CEMS to demonstrate compliance with the applicable emission limitation. These CEMS are available at reasonable costs and are in widespread use in numerous applications and numerous industries.

For sources complying with either the outlet CO concentration emission limitation or the CO percent reduction emission limitation, an initial performance evaluation of the CEMS is required. This performance evaluation will certify the performance of the CO and O_2 CEMS. The first 4-hour period following this performance evaluation of the CEMS will be used to determine initial compliance with either emission limitation.

G. How Did We Select the Continuous Compliance Requirements?

As mentioned above, we are proposing the use of CEMS to demonstrate compliance with the applicable emission limitation. If you must comply with the outlet CO concentration emission limitation or the CO percent reduction emission limitation, continuous compliance with the limitation is required at all times. We are proposing the use of Procedure 1 in 40 CFR part 60, appendix F, to ensure that the performance of the CEMS does not deteriorate over time.

We consider the use of CEMS the best means of ensuring continuous compliance with the emission limitation, and alternatives to CEMS are considered only if we consider the use of a CEMS technically or economically infeasible. For sources complying with either of the emission limitations, we believe requiring a CEMS is feasible because the costs of CO and O_2 CEMS are reasonable.

H. How Did We Select the Monitoring and Testing Methods?

Continuous emission monitoring systems are available which can measure CO emissions at the low concentrations found in the exhaust from an oxidation emission control device operating on an engine test cell/stand. Performance Specification 4A for CO CEMS has not been updated recently and does not reflect the performance capabilities of these CEMS.

As a result, we solicit comments on the performance capabilities of state-of-the-art CO CEMS and their ability to accurately measure the low concentrations of CO experienced in the exhaust of an engine test cell/stand. We also solicit comments with specific recommendations on the changes we should make to our performance specification for CO CEMS (PS4A) to ensure the installation and use of CEMS which can be used to determine compliance of engine test cells/stands with the proposed emission limitation. In addition, we solicit comments on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting the recommended changes to our performance specifications for CO CEMS.

Today's proposal specifies the use of Method 3A or 3B of 40 CFR part 60, appendix A, as the reference method to certify the performance of O_2 CEMS and the use of Method 10 of 40 CFR part 60,

appendix A, as the reference method to certify the performance of the CO CEMS. Method 10 is capable of measuring CO concentrations as low as those experienced in the exhaust of an oxidation emission control device operating on an engine test cell/stand. However, the performance criteria in addenda A of Method 10 have not been revised recently and are not suitable for certifying the performance of a CO CEMS at these CO concentrations. Specifically, we believe the range and minimum detectable sensitivity should be changed to reflect target concentrations as low as 1 ppmvd CO in some cases.

As a result, we solicit comments with specific recommendations on the changes we should make to Method 10 and the performance criteria in addenda A, as they are related to the low CO levels emitted by some engine test cells/stands. If you recommend changes to Method 10 or the performance criteria, we also solicit comments on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting those changes, while also meeting the remaining addenda A performance criteria.

I. How Did We Select the Notification, Recordkeeping and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions of 40 CFR part 63.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

This proposed rule will reduce HAP emissions in the 5th year following promulgation by an estimated 135 tons (148.5 megagrams).

B. What Are the Cost Impacts?

The total annualized cost of this proposed rule in the 5th year following promulgation is estimated to be about $7.4 million. This cost includes recordkeeping and reporting costs, CEMS costs, emission control device costs, and operating, maintenance, and annualized capital investment costs for emission control devices and CEMS.

C. What Are the Economic Impacts?

This proposed rule is not expected to affect any of the existing engine test cells/stands located at major source facilities which test internal combustion engines, combustion turbine engines, or rocket engines.

We estimate that 148 new engine test cells/stands will be constructed in the next 5 years at engine research and development or production facilities which are major sources of HAP emissions. These new engine test cells/stands will be required to comply with the proposed rule.

We anticipate that 84 of these new engine test cells/stands will be built at auto, tractor, and diesel engine manufacturing facilities, and that 64 of these new engine test cells/stands will be built at military facilities.

The auto, tractor, and diesel engine manufacturing firms that are expected to construct new engine test cells/stands are large multi-national firms; thus, the cost of compliance is insignificant in comparison to firm revenues. The total sales for the potentially affected firms range from $6.5 billion to more than $184 billion. Thus, the impact on affected firms ranges from 0.0007 to 0.015 percent of corporate revenues. Likewise, the cost of compliance for military facilities that may be affected is insignificant when compared to selected facilities expenditures. The compliance costs account for 0.07 percent of facility expenditures on average, and 0.001 percent of the 2001 budget for U.S. defense. Therefore, the economic impacts associated with this proposed rule are considered negligible.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

We do not expect any significant wastewater, solid waste, or energy impacts resulting from this proposed rule. Energy impacts associated with this proposed rule would be due to additional energy consumption that would be required by installing and operating control equipment. The only energy requirement for the operation of the control technologies is a very small increase in fuel consumption resulting from back pressure caused by the emission control system.

V. Solicitation of Comments and Public Participation

We are requesting comments on this proposed rule. We request comments on all aspects of this proposed rule, such as the proposed emission limitation, recordkeeping and monitoring requirements, as well as aspects you may feel have not been addressed.

We also request comments on the performance capabilities of state-of-the-art CO CEMS and their ability to measure the low concentrations of CO in the exhaust of engine test cells/stands.

We also request comments with recommendations on changes commenters believe we should make to our performance specifications for CO CEMS (PS4A) of 40 CFR part 60, appendix B, to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A to Method 10 that will allow the measurement of low CO concentrations emitted by some engine test cells/stands. In addition, we request comments from these commenters on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting the changes they recommend to our performance specification for CO CEMS (PS4A) of 40 CFR part 60, appendix B, Method 10 of 40 CFR part 60, appendix A, and addendum A to Method 10.

We also solicit comments on whether we should adopt a MACT emission limitation in terms of THC emissions rather than CO emissions. In addition, we solicit comments on whether we should adopt both THC and CO MACT emission limitations and allow affected sources to comply with either the THC or the CO MACT emission limitation.

We request any HAP emissions test data available from engine test cells/stands equipped with an oxidation emission control device or other equivalent emission control system; however, if you submit HAP emissions test data, please submit the full and complete emission test report with these data. Include the sections describing the specific type of engine and its operation during the test, discussion of the test methods employed and the Quality Assurance/Quality Control procedures followed, the raw data sheets, and all related calculations. The emissions data submitted without this information is not useful.

Finally, in the interest of providing as much compliance flexibility as possible to major sources, we request comments on the possibility of averaging emissions across processes throughout the entire major source and allowing reductions from emission points covered by other MACT standards, within the facility, to be counted towards the emission limitations proposed in this action. Comments should include ideas on how such averaging scheme would work and be implemented. This type of provision, if promulgated, could allow flexibility for the affected facility to determine an effective emission control strategy while, at the same time, achieving the emission reductions intended by this proposal.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not a ''significant regulatory action'' because it does not have an annual effect on the economy of over $100 million. As such, this action was not submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

We are required by section 112 of the CAA to establish the standards in this proposed rule. This proposed rule primarily affects private industry and does not impose significant economic costs on State or local governments. This proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We know of one company that reported operating engine test cells/stands that are owned by an Indian tribal government. However, these test cells/stands are used for testing rocket engines. Although test cells/stands used for testing rocket engines are covered by the proposed rule, test cells/stands used for testing rocket engines are not required to meet any emission limitation, reporting, or recordkeeping requirements. Thus, Executive Order 13175 does not apply to this proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may

significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has either fewer than 500 employees if the business is involved in testing marine engines, or fewer than 1,000 employees if the business is involved in the testing of other types of engines; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The requirements of this proposed rule apply only to major sources, which are defined as facilities that emit more than 10 tons per year of any one HAP, or more than 25 tons per year of a combination of HAP. According to our analyses, none of the identified major sources met the definition of a small business stated above. Therefore, this proposed rule will not impose any requirements on small entities. Pursuant to the provisions of 5 U.S.C. 605(b), we hereby certify that the proposed NESHAP, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In 1998, we sent information collection requests (ICR) to over 100 companies representing over 300 individual facilities. The ICR requested information on HAP emissions from engine test cells/stands and on the number of employees of the parent company. Using that information, we determined that there are no major sources that are also small businesses.

In addition to the analyses of ICR data, we held several meetings with companies that operate engine testing facilities to inform them of the progress and development of the proposed rule. We also held a meeting on April 11, 2001 with the National Marine Manufacturers Association (NMMA), which represents the small businesses that had previously expressed concerns about the possible impacts of this proposed rule. That meeting helped clarify to NMMA and its member companies what type of facilities might be subject to this proposed rule. The meeting was followed up with phone conversations with NMMA and some of its member companies in order to obtain more information and to determine if any of the small entities emitted enough HAP to be considered a major source. Again, we concluded after the outreach activities that none of the small marine engine manufacturing businesses represented by NMMA would be subject to this proposed rule since they do not emit enough HAP to be considered major sources.

Although this proposed rule is not expected to regulate small entities, we have tried to reduce the impact of this proposed rule on all sources. In this proposed rule, we are applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 1967.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule requires maintenance inspections of the control devices but does not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements involve only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 5 years after the effective date of the standards) is estimated to be 9,600 labor hours per year at a total annual cost of $440,800. This estimate includes a one-time (initial) CEMS performance evaluation, annualized capital monitoring equipment costs, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping. Total annual costs associated with the new source control and monitoring requirements over the period of the ICR are estimated at $7.4 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 14, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 13, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. We propose to use EPA Methods 3A, 3B, 10, 10B of 40 CFR part 60, appendix A, and PS3 and PS4A of 40 CFR part 60, appendix B. Consistent with the NTTAA, we searched for voluntary consensus standards which could be used in lieu of these methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Method 10B and PS3 and PS4A.

One voluntary consensus standard was identified as an acceptable alternative to EPA Methods 3A and 10. The voluntary consensus standard ASTM D6522–00, ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers'' is an acceptable alternative to EPA Methods 3A and 10 for identifying oxygen and carbon monoxide concentrations, respectively, for this proposed rule when the fuel used during testing is natural gas.

Our search for emissions measurement procedures identified seven other voluntary consensus standards. Six of these seven standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule, however, were impractical alternatives to EPA test methods/performance specifications for the purposes of this proposed rule. Therefore, for the reason discussed below, we do not intend to adopt these voluntary consensus standards.

The standard, ASTM D3162 (1994) ''Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared (NDIR) Spectrometry),'' is impractical as an alternative to EPA Method 10 in this proposed rulemaking because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the range of EPA Method 10 (20–1000 ppm CO) at the upper end (but states that it has a lower limit of sensitivity). Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion sources. In terms of NDIR instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds).

The following five voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of this proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Method 3B; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration,'' for EPA Methods 3A and 10; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Methods 3A and 10; CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Methods 3A and 10; and CAN/CSA Z223.21–M1978, ''Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry,'' for EPA Method 10.

The seventh voluntary consensus standard identified in this search for EPA Methods 3A and 10, ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' was not available at the time the review was conducted for the purposes of this proposed rulemaking because the method was under development by a voluntary consensus body. While we are not proposing to include this voluntary consensus standard in today's proposal, we will consider it when this voluntary consensus standard is final.

We invite comment on the compliance demonstration requirements included in the proposed rule and specifically solicit comment on potentially applicable voluntary consensus standards. Commenters should explain, however, why this proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's methods or performance specifications. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.9310 and 63.9325 to subpart PPPPP lists the testing methods/performance specifications included in the proposed rule. Under § 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission

to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart PPPPP to read as follows:

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

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Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

What This Subpart Covers

§ 63.9280 What is the purpose of this subpart PPPPP?

Subpart PPPPP establishes national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands located at major sources of hazardous air pollutants (HAP) emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations contained in this NESHAP.

§ 63.9285 Am I subject to this subpart?

You are subject to this subpart if you own or operate an engine test cell/stand that is located at a major source of HAP emissions.

(a) An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.9290 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed engine test cell/stand that is located at a major source of HAP emissions.

(1) *Existing engine test cell/stand.* An engine test cell/stand is existing if you commenced construction or reconstruction of the engine test cell/stand on or before May 14, 2002. A change in ownership of an existing engine test cell/stand does not make that engine test cell/stand a new or reconstructed engine test cell/stand.

(2) *New engine test cell/stand.* An engine test cell/stand is new if you commenced construction of the engine test cell/stand after May 14, 2002.

(3) *Reconstructed engine test cell/stand.* An engine test cell/stand is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced after May 14, 2002.

(b) Existing engine test cells/stands do not have to meet the requirements of this subpart and of subpart A of this part.

(c) A new or reconstructed engine test cell/stand located at a major source which is used exclusively for testing internal combustion engines with a rated power of less than 25 horsepower (hp) (19 kilowatts (kW)) does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.9345(b).

(d) A new or reconstructed engine test cell/stand located at a major source which is used exclusively for testing combustion turbine engines or which is used exclusively for testing rocket engines does not have to meet the requirements of this subpart and of subpart A of this part.

§ 63.9295 When do I have to comply with this subpart?

(a) *Affected sources.*

(1) If you start up your new or reconstructed engine test cell/stand before [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must comply with the emission limitation in this subpart no later than [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(2) If you start up your new or reconstructed engine test cell/stand on or after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must comply with the emission limitation in this subpart upon startup.

(b) *Area sources that become major sources.* If your new or reconstructed engine test cell/stand is located at an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, your new or reconstructed engine test cell/stand must be in compliance with this

subpart when the area source becomes a major source.

(c) You must meet the notification requirements in § 63.9345 according to the schedule in § 63.9345 and in subpart A of this part.

Emission Limitations

§ 63.9300 What emission limitation must I meet?

For each new or reconstructed test cell/stand which is used in whole or in part for testing internal combustion engines with a rated power of 25 hp (19 kW) or more and which is located at a major source, you must comply with one of the two emission limitations in Table 1 of this subpart.

General Compliance Requirements

§ 63.9305 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitation which applies to you at all times, including startup, shutdown, or malfunction of your engine test cell/stand.

(b) If you must comply with an emission limitation, you must operate and maintain your engine test cell/stand, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times.

Testing and Initial Compliance Requirements

§ 63.9310 By what date must I conduct the initial compliance demonstrations?

You must conduct the initial compliance demonstrations that apply to you in Table 2 of this subpart within 180 calendar days after the compliance date that is specified for your engine test cell/stand in § 63.9295 and according to the provisions in § 63.7(a)(2).

§ 63.9320 What procedures must I use?

(a) You must conduct each initial compliance demonstration that applies to you in Table 2 of this subpart.

(b) You must conduct a performance evaluation of each continuous emissions monitor system (CEMS) according to the requirements in § 63.8 and according to the applicable Performance Specification (PS) of 40 CFR part 60, appendix B (PS3 or PS4A).

(c) If you chose to comply with the carbon monoxide (CO) concentration emission limitation, the initial demonstration of compliance consists of the first 4-hour rolling average CO concentration recorded after completion of the CEMS performance evaluation. You must correct the CO concentration at the outlet of the engine test cell/stand or the emission control device to a dry basis and to 15 percent oxygen (O_2) content according to Equation 1 of this section:

$$C_c = C_{unc}\left(\frac{5.9}{(20.9 - \%O_{2d})}\right) \qquad \text{(Eq. 1)}$$

Where:

C_c = concentration of CO, corrected to 15 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{unc} = total uncorrected concentration of CO, ppmvd

$\%O_{2d}$ = concentration of oxygen measured in gas stream, dry basis, percent by volume.

(d) If you chose to comply with the CO percent reduction emission limitation, the initial demonstration of compliance consists of the first 4-hour rolling average percent reduction in CO recorded after completion of the performance evaluation of the CEMS. You must complete the actions described in paragraphs (d)(1) through (2) of this section.

(1) Correct the CO concentrations at the inlet and outlet of the emission control device to a dry basis and to 15 percent O_2 content using Equation 1 of this section.

(2) Calculate the percent reduction in CO using this Equation 2:

$$R = \frac{C_i - C_o}{C_i} \times 100 \qquad \text{(Eq. 2)}$$

Where:

R = percent reduction in CO

C_i = corrected CO concentration at inlet of the emission control device

C_o = corrected CO concentration at the outlet of the emission control device.

§ 63.9325 What are my monitor installation, operation, and maintenance requirements?

(a) To comply with the CO concentration emission limitation, you must install, operate, and maintain a CEMS to monitor CO and O_2 at the outlet of the exhaust system of the engine test cell/stand or at the outlet of the emission control device.

(b) To comply with the CO percent reduction emission limitation, you must install, operate, and maintain a CEMS to monitor CO and O_2 at both the inlet and the outlet of the emission control device.

(c) To comply with either emission limitation, the CEMS must be installed and operated according to the requirements described in paragraphs (c)(1) through (4) of this section.

(1) You must install, operate, and maintain each CEMS according to the applicable PS of 40 CFR part 60, appendix B (PS3 or PS4A).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to PS3 of 40 CFR part 60, appendix B, using Method 3A or 3B of 40 CFR part 60, appendix A, for the O_2 CEMS; and according to PS4A of 40 CFR part 60, appendix B, using Method 10 or 10B of 40 CFR part 60, appendix A, for the CO CEMS. If the fuel used in the engines being tested is natural gas, you may use ASTM D 6522–00, ''Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide and Oxygen Concentration in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers.''

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, each representing a different 15-minute period within the same hour, to have a valid hour of data.

(4) All CEMS data must be reduced as specified in § 63.8(g)(2) and recorded as CO concentration in ppmvd, corrected to 15 percent O_2 content.

(d) If you have CEMS that are subject to paragraph (a) or (b) of this section, you must properly maintain and operate the monitors continuously according to the requirements described in paragraphs (d)(1) and (2) of this section.

(1) *Proper maintenance.* You must maintain the monitoring equipment at all times that the engine test cell/stand is operating, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(2) *Continued operation.* You must operate your CEMS according to paragraphs (d)(2) (i) and (ii) of this section.

(i) You must conduct all monitoring in continuous operation at all times that the engine test cell/stand is operating, except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments). Quality assurance or control activities must be performed according to Procedure 1 of 40 CFR part 60, appendix F.

(ii) Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality

assurance or control activities must not be used for purposes of calculating data averages. You must use all of the data collected from all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

§ 63.9330 How do I demonstrate initial compliance with the applicable emission limitation?

(a) You must demonstrate initial compliance with the emission limitation that applies to you according to Table 3 of this subpart.

(b) You must submit the Notification of Compliance Status containing results of the initial compliance demonstration according to the requirements in § 63.9345(f).

Continuous Compliance Requirements

§ 63.9335 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments of the monitoring system), you must conduct all monitoring in continuous operation at all times the engine test cell/stand is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing the performance of the emission control device or in assessing emissions from the new or reconstructed engine test cell/stand.

§ 63.9340 How do I demonstrate continuous compliance with the applicable emission limitation?

(a) You must demonstrate continuous compliance with the emission limitation in Table 1 of this subpart that applies to you according to methods specified in Table 4 of this subpart.

(b) You must report each instance in which you did not meet the emission limitation which applies to you. You must also report each instance in which you did not meet the requirements in Table 6 of this subpart which apply to you. These instances are deviations from the emission limitations in this subpart and must be reported according to the requirements in § 63.9350.

(c) Deviations from the applicable emission limitation that occur during a period of malfunction of the control equipment as defined by § 63.9375 are not violations.

Notifications, Reports, and Records

§ 63.9345 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.8(e), (f)(4) and (6) and 63.9(b), (g)(1) and (2), and (h) that apply to you by the dates specified.

(b) If you own or operate a new or reconstructed test cell/stand used for testing internal combustion engines, you are required to submit an Initial Notification as specified in paragraphs (b)(1) through (3) of this section.

(1) As specified in § 63.9(b)(2), if you start up your new or reconstructed engine test cell/stand before [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(2) As specified in § 63.9(b), if you start up your new or reconstructed engine test cell/stand on or after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(3) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.9290(c), your notification should include the information in § 63.9(b)(2)(i) through (v) and a statement that your new or reconstructed engine test cell/stand has no additional requirements, explaining the basis of the exclusion (for example, that the test cell/stand is used exclusively for testing internal combustion engines with a rated power of less than 25 hp (19kW)).

(c) If you are required to comply with an emission limitation in Table 1 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each initial compliance demonstration with an emission limitation, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(d) You must submit a notification of performance evaluation of your CEMS at least 60 calendar days before the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.9350 What reports must I submit and when?

(a) If you own or operate a new or reconstructed engine test cell/stand which must meet an emission limitation, you must submit a semiannual compliance report according to Table 5 of this subpart by the applicable dates specified in paragraphs (a)(1) through (5) of this section, unless the Administrator has approved a different schedule.

(1) The first semiannual compliance report must cover the period beginning on the compliance date specified in § 63.9295 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date specified in § 63.9295.

(2) The first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified in § 63.9295.

(3) Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each new or reconstructed engine test cell/stand that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established the date for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) If there is no deviation from the applicable emission limitation and the CEMS was not out-of-control, according to § 63.8(c)(7), the semiannual compliance report must contain the information described in paragraphs (b)(1) through (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) A statement that no deviation from the applicable emission limitation occurred during the reporting period and that no CEMS was out-of-control, according to § 63.8(c)(7).

(c) For each deviation from an emission limitation, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (c)(1) through (4) of this section.

(1) The date and time that each deviation started and stopped.

(2) The total operating time of each new or reconstructed engine test cell/stand during the reporting period.

(3) A summary of the total duration of the deviation during the reporting period (recorded in 4-hour periods), and the total duration as a percent of the total operating time during that reporting period.

(4) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(d) For each CEMS deviation, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (d)(1) through (7) of this section.

(1) The date and time that each CEMS was inoperative except for zero (low-level) and high-level checks.

(2) The date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(3) A summary of the total duration of CEMS downtime during the reporting period (reported in 4-hour periods), and the total duration of CEMS downtime as a percent of the total engine test cell/stand operating time during that reporting period.

(4) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes and other unknown causes.

(5) The monitoring equipment manufacturer(s) and model number(s) of each monitor.

(6) The date of the latest CEMS certification or audit.

(7) A description of any changes in CEMS or controls since the last reporting period.

§ 63.9355 What records must I keep?

(a) You must keep the records as described in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, as required in § 63.10(b)(2)(xiv).

(2) Records of performance evaluations as required in § 63.10(b)(2)(viii).

(3) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(4) Records of all maintenance on the air pollution control equipment, if applicable, as required in § 63.10(b)(iii).

(b) For each CEMS, you must keep the records as described in paragraphs (b)(1) through (3) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (i.e., superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to the relative accuracy test for CEMS as required in § 63.8(f)(6)(i), if applicable.

(c) You must keep the records required in Table 4 of this subpart to show continuous compliance with each emission limitation that applies to you.

§ 63.9360 In what form and how long must I keep my records?

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must retain your records of the most recent 2 years on site, or your records must be accessible on site. Your records of the remaining 3 years may be retained off site.

Other Requirements and Information

§ 63.9365 What parts of the General Provisions apply to me?

Table 6 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.9370 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to the emission limitations in § 63.9300 under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9375 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA); in 40 CFR 63.2, the General Provisions of this part; and in this section:

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Statute 2399).

Area source means any stationary source of HAP that is not a major source as defined in this subpart.

Combustion turbine engine means a device in which air is compressed in a compressor, enters a combustion chamber, and is compressed further by the combustion of fuel injected into the combustion chamber. The hot compressed combustion gases then expand over a series of curved vanes or blades arranged on a central spindle which rotates.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

Engine means any internal combustion engine, any combustion turbine engine, or any rocket engine.

Engine test cell/stand means any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

Hazardous air pollutants (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Internal combustion engine means a device in which air enters a combustion chamber, is mixed with fuel, compressed in the chamber, and combusted. Fuel may enter the combustion chamber with the air or be injected into the combustion chamber. Expansion of the hot combustion gases in the chamber rotates a shaft, either through a reciprocating or rotary action. For purposes of this subpart, this definition does not include combustion turbine engines.

Major source, as used in this subpart, shall have the same meaning as in § 63.2.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Rated power means the maximum power output of an engine in use.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Responsible official means responsible official as defined by 40 CFR 70.2.

Rocket engine means a device consisting of a combustion chamber in which materials referred to as propellants, which provide both the fuel and the oxygen for combustion, are burned. Combustion gases escape through a nozzle, providing thrust.

Tables to Subpart PPPPP of Part 63

TABLE 1 TO SUBPART PPPPP OF PART 63.—EMISSION LIMITATIONS

[As stated in § 63.9300, you must comply with the following emission limitations]

For each new or reconstructed engine test cell/stand located at a major source which is used in whole or in part for testing * * *	You must meet one of the following emission limitations:
1. Internal combustion engines with a rated power of 25 hp (19 kW) or more.	a. Limit the concentration of CO to 5 ppmvd or less (corrected to 15 percent O_2 content); OR b. Achieve a reduction in CO of 99.9 percent or more between the inlet and outlet concentrations of CO (corrected to 15 percent O_2 content) of the emission control device.

TABLE 2 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR INITIAL COMPLIANCE DEMONSTRATIONS

[As stated in § 63.9310, you must comply with the following emission limitations]

For each engine test cell/ stand complying with * * *	You must * * *	Using * * *	According to the following requirements***
1. The CO concentration emissions limitation.	Demonstrate CO emissions are 5 ppmvd or less.	A CEMS for CO and O_2 at the outlet of the engine test cell/stand or emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9325(c). The demonstration consists of the first 4-hour rolling average of measurements. The CO concentration must be corrected to 15 percent O_2content, dry basis using Equation 1 of § 63.9320.
2. The CO percent reduction emission limitation.	Demonstrate a reduction in CO of 99.9 percent or more.	A CEMS for CO and O_2 at both the inlet and outlet of the emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9325(c). The demonstration consists of the first 4-hour rolling average of measurements. The inlet and outlet CO concentrations must be corrected to 15 percent O_2 content using Equation 1 of § 63.9320. The reduction in CO is calculated using Equation 2 of § 63.9320.

TABLE 3 TO SUBPART PPPPP OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

[As stated in § 63.9330, you must comply with the following emission limitations]

For the * * *	You have demonstrated initial compliance if * * *
1. CO concentration emission limitation.	The first 4-hour rolling average CO concentration is 5 ppmvd or less, corrected to 15 percent O_2 content.
2. CO percent reduction emission limitation.	The first 4-hour rolling average reduction in CO is 99.9 percent or more, dry basis, corrected to 15 percent O_2 content.

TABLE 4 TO SUBPART PPPPP OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

[As stated in § 63.9340, you must comply with the following emission limitations]

For the * *y*	You must demonstrate continuous compliance by * * *
1. CO concentration emission limitation.	a. Collecting the CEMS data according to § 63.9325(a), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, according to § 63.9320; and b. Demonstrating CO emissions are 5 ppmvd or less over each 4-hour rolling averaging period.
2. CO percent reduction emission limitation.	a. Collecting the CEMS data according to § 63.9325(b), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, calculating the CO percent reduction according to § 63.9320; and b. Demonstrating a reduction in CO of 99.9 percent or more over each 4-hour rolling averaging period.

TABLE 5 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.9350, you must comply with the following emission limitations]

If you own or operate an engine test cell/stand which must comply with emission limitations, you must submit a * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	a. If there are no deviations from the emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period;	i. Semi-annually, according to the requirements in § 63.9350.
	or	
	b. If there were no periods during which the CEMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the the CEMS was out-of-control during the reporting period;	i. Semi-annually, according to the requirements in § 63.9350.
	or	
	c. If you have a deviation from any emission limitation during the reporting period, the report must contain the information in § 63.9350(c);	i. Semi-annually, according to the requirements in § 63.9350.
	or	
	d. If there were periods during which the CEMS was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.9350(d).	i. Semi-annually, according to the requirements in § 63.9350.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.1(a)(1)	Applicability	General applicability of the General Provisions.	Yes. Additional terms defined in § 63.9375.
§ 63.1(a)(2)–(4)	Applicability	Applicability of source categories	Yes.
§ 63.1(a)(5)	[Reserved].		
§ 63.1(a)(6)–(7)	Applicability	Contact for source category information; extension of compliance through early reduction.	Yes.
§ 63.1(a)(8)	Applicability	Establishment of State rules or programs	No.
§ 63.1(a)(9)	[Reserved].		
§ 63.1(a)(10)–(14) ...	Applicability	Explanation of time periods, postmark deadlines.	Yes.
§ 63.1(b)(1)	Applicability	Initial applicability	Yes. Subpart PPPPP clarifies applicability at § 63.9285.
§ 63.1(b)(2)	Applicability	Title V operating permit—reference to part 70.	Yes. All major affected sources are required to obtain a title V permit.
§ 63.1(b)(3)	Applicability	Record of applicability determination	Yes.
§ 63.1(c)(1)	Applicability	Applicability after standards are set	Yes. Subpart PPPPP clarifies the applicability of each paragraph of subpart A to sources subject to subpart PPPPP.
§ 63.1(c)(2)	Applicability	Title V permit requirement for area sources	No. Area sources are not subject to subpart PPPPP.
§ 63.1(c)(3)	[Reserved].		
§ 63.1(c)(4)	Applicability	Extension of compliance for existing sources.	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.1(c)(5)	Applicability	Notification requirements for an area source becoming a major source.	Yes.
§ 63.1(d)	[Reserved].		
§ 63.1(e)	Applicability	Applicability of permit program before a relevant standard has been set.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes. Additional definitions are specified in § 63.9375.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, severability.	Yes.
§ 63.5(a)	Construction/Reconstruction	Construction and reconstruction—applicability.	Yes.
§ 63.5(b)(1)	Construction/Reconstruction	Requirements upon construction or reconstruction.	Yes.
§ 63.5(b)(2)	[Reserved].		
§ 63.5(b)(3)	Construction/Reconstruction	Approval of construction	Yes.
§ 63.5(b)(4)	Construction/Reconstruction	Notification of construction	Yes.
§ 63.5(b)(5)	Construction/Reconstruction	Compliance	Yes.
§ 63.5(b)(6)	Construction/Reconstruction	Addition of equipment	Yes.
§ 63.5(c)	[Reserved].		
§ 63.5(d)	Construction/Reconstruction	Application for construction reconstruction	Yes.
§ 63.5(e)	Construction/Reconstruction	Approval of construction or reconstruction	Yes.
§ 63.5(f)	Construction/Reconstruction	Approval of construction or reconstruction based on prior State review.	Yes.
§ 63.6(a)	Applicability	Applicability of standards and monitoring requirements.	Yes.
§ 63.6(b)(1)–(2)	Compliance dates for new and reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(3)	Compliance dates for new and reconstructed sources.		No.
§ 63.6(b)(4)	Compliance dates for new and reconstructed sources.	Compliance dates for sources also subject to CAA section 112(f) standards.	Yes.
§ 63.6(b)(5)	Compliance dates for new and reconstructed sources.	Notification	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance dates for new and reconstructed sources.	Compliance dates for new and reconstructed area sources that become major.	Yes.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources.	Effective date establishes compliance date	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance dates for existing sources.	Compliance dates for existing area sources that become major.	Yes. If the area source becomes a major source by addition or reconstruction, the added or reconstructed portion will be subject to subpart PPPPP.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation and maintenance requirements.	Operation and maintenance	Yes; except that you are not required to have a startup, shutdown, and malfunction plan (SSMP).
§ 63.6(e)(3)	SSMP	(1) Requirement for startup, shutdown, or malfunction and SSMP. (2) Content of SSMP.	No. Subpart PPPPP does not require a SSMP.
§ 63.6(f)(1)	Compliance except during startup, shutdown, or malfunction.		No. You must comply with emission standards at all times, including startup, shutdown, and malfunction.
§ 63.6(f) (2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g) (1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity/VE Standards	No. Subpart PPPPP does not establish opacity/VE standards and does not require continuous opacity monitoring systems (COMS).

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.6(i) (1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	No. Compliance extension provisions apply to existing sources, which do not have emission limitations in subpart PPPPP.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a) (1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct within 180 days after first subject to rule.	No. Subpart PPPPP does not require performance testing.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.		No.
§ 63.7(b)(2)	Notification No. of Rescheduling.		No.
§ 63.7(c)	Quality Assurance/Test Plan		No.
§ 63.7(d)	Testing Facilities		No.
§ 63.7(e)(1)	Conditions FOR Conducting Performance Tests.		No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.		No.
§ 63.7(e)(3)	Test Run Duration		No.
§ 63.7(e)(4)	Other Performance Testing	Administrator may require other testing under CAA section 114.	Yes.
§ 63.7(f)	Alternative Test Method		No.
§ 63.7(g)	Performance No. Test Data Analysis.		No.
§ 63.7(h)	Waiver of Tests		No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes. Subpart PPPPP contains specific requirements for monitoring at § 63.9325.
§ 63.8(a)(2)	Performance Specifications.	Performance Specifications in appendix B of 40 CRF part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares		No. Subpart PPPPP does not have monitoring requirements for flares.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b) (2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	(1) Specific requirements for installing monitoring systems. (2) Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. (3) If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable Startup, Shutdown, or Malfunction.		No.
§ 63.8(c)(1)(ii)	Startup, Shutdown, or Malfunction not in SSMP.		No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	(1) Determination by Administrator whether source is complying with operation and maintenance requirements. (2) Review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations and inspection.	Yes.
63.8(c) (2)–(3)	Monitoring System Installation.	(1) Must install to get representative emission of parameter measurements. (2) Must verify operational status before or at performance test.	Yes.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.8(c)(4)	Continuous Monitoring System (CMS) requirements.		No. Follow specific Requirements in § 63.9335(a) and (b).
§ 63.8(c)(5)	COMS Minimum Procedures		No.
§ 63.8(c) (6)–(8)	CMS Requirements	(1) Zero and high level calibration check requirements. (2) Out-of-control periods.	Yes; except that subpart PPPPP does not require COMS.
§ 63.8(d)	CMS Quality Control	(1) Requirements for CMS quality control, including calibration, etc. (2) Must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes; except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f) (1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	(1) COMS 6-minute averages calculated over at least 36 evenly spaced data points. (2) CEMS 1-hour averages computed over at least 4 equally spaced data points.	Yes; except that provisions for COMS are not applicable Averaging periods for demonstrating compliance are specified at § 63.9340
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No. Specific language is located at § 63.9335(a).
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	(1) Submit notification 120 days after effective date;. (2) Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup;. (3) Contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.		No.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.		No.
§ 63.9(f)	Notification of Opacity/VE Test.		No.
§ 63.9(g)(1)	Additional Notifications When Using CMS.	Notification of performance evaluation	Yes.
§ 63.9(g)(2)	Additional Notifications When Using CMS.		No.
§ 63.9(g)(3)	Additional Notifications When Using CMS.	Notification that exceeded criterion for relative accuracy.	Yes. If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	(1) Contents (2) Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due after 30 days. (3) When to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	(1) Applies to all, unless compliance extension. (2) When to submit to Federal vs. State authority. (3) Procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	(1) General requirements (2) Keep all records readily available.	Yes.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
		(3) Keep for 5 years.	
§ 63.10(b)(2)(i)–(v) ..	Records related to Startup, Shutdown, or Malfunction.	.....	No.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15).	Records	Additional records for CEMS	Yes.
§ 63.10(c) (7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS..	No. Specific language is located at § 63.9355.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	.....	No.
§ 63.10(d)(4)	Progress Reports	.....	No.
§ 63.10(d)(5)	Startup, Shutdown, or Malfunction Reports.	.....	No.
§ 63.10(e)(1) and (2)(i).	Additional CMS Reports	Additional CMS reports	Yes.
§ 63.10(e)(2)(ii)	Additional CMS Reports	.....	No.
§ 63.10(e)(3)	Additional CMS Reports	Excess emissions and parameter exceedances report.	No. Specific language is located in § 63.9350.
§ 63.10(e)(4)	Additional CMS Reports		No.
§ 63.10(f)	Waiver for Recordkeeping/ Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Control Device Requirements.		No.
§ 63.12	State Authority and Delegations.	State authority to enforce standards	Yes.
§ 63.13	Addresses of State Air Pollution Control Offices and EPA Regional Offices.	Addresses where reports, notifications, and requests are send.	Yes.
§ 63.14	Incorporation by reference ...	Test methods incorporated by reference	Yes.
§ 63.15	Availability of information and confidentiality.	Public and confidential information	Yes.

[FR Doc. 02–11296 Filed 5–13–02; 8:45 am]

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Federal Register

Tuesday,
May 14, 2002

Part IV

National Archives and Records Administration

36 CFR Part 1230
Micrographic Records Management; Republication; Rule

Federal Register Format Changes

EDITOR'S NOTE: The Office of the Federal Register is republishing the following document in a special format to illustrate proposed changes to the appearance of the printed and PDF pages of the daily Federal Register. This experimental format uses a two-column layout, sans serif fonts, larger and bolder headings in the preamble and tables, bullets in the Summary, more space between lines of regulatory text, and makes other changes to the appearance of text and tables. The format changes are intended to improve the readability and public understanding of Federal regulations and notices without increasing white space that would affect printing costs charged to agencies. The proposed format would result in no change or a slight decrease in the number of pages printed. The format changes shown below do not affect the legal status of the final rule issued by the National Archives and Records Administration.

We invite agencies and members of the public to comment on the proposed format by email at: fedreg.legal@nara.gov, or by U.S. mail at: National Archives and Records Administration, Office of the Federal Register (NF), Federal Register Format Changes, 700 Pennsylvania Ave., NW, Washington, DC 20408-0001. For more information the proposed format, go to the Federal Register web site at: http://www.nara.gov/fedreg/plainlan.html#top.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AB06

Micrographic Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its Micrographic Records Management regulations to:

- Update the editions of standards incorporated by reference to the most current edition; and
- Rewrite the regulations in plain language format.

This final rule will affect Federal agencies.

DATES: This rule is effective June 10, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-713-7360, ext. 240, or fax number 301-713-7270.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on September 11, 2001, at 66 FR 47125, for a 60-day public comment period. We received comments from 2 Federal agencies, 1 records management professional organization, and 2 members from the public. Following is a summary of the comments and a discussion of the changes that we made to the proposed rule.

Terminology (§§ 1230.4 and 1230.7(f))

ARMA International (ARMA) recommended replacing the term ''records schedule'' with ''records retention schedule'' in § 1230.7(f) and defining the suggested term in § 1230.4, Definitions. We did not adopt this comment because ''records schedule'' is a standard records management term that is used throughout NARA regulations. The term does not need to be included in Part 1230 because it is already defined in 36 CFR 1220.14, which applies to the entire Subchapter B.

Discontinuing Filming Temporary Records (§ 1230.10)

A Federal agency asked if NARA would require agencies to request approval before discontinuing filming temporary records when the records, regardless of format, would be kept for the same period of time. Agencies are not required to request approval to film temporary records (§ 1230.10(b)) and the same is true for discontinuing microfilming temporary records. The principle, which has been in place for many years now, is that the nature and use of temporary records is not changed when the original paper is copied to microform.

Filming Requirements (§ 1230.14)

A Federal agency pointed out that § 1230.14 no longer includes the phrase ''when the original paper records will be destroyed or otherwise disposed of,'' though § 1230.22 still makes that distinction. We did not intend to change § 1230.14(a) when we reformatted the paragraph in plain language, and have added the phrase in this final rule. We also modified § 1230.14(a)(2) for clarity.

Using Dry Silver Film for Permanent Records (§ 1230.14)

A member from the public recommended that we consider revising the section to permit the use of dry silver film for filming permanent records. We did not adopt this change because for long-term retention, the dry-silver film is much riskier than the traditional silver-gelatin film.

- Dry silver film that meets the ISO standard has a life expectancy rating of only 100 years, while wet-processed silver-gelatin film with a polyester base has a higher life expectancy rating of 500 years.
- Dry silver film is never ''fixed'' meaning, it will remain potentially developable for an indefinite period of time. Fixing is the process of removing the light sensitive silver salts. This means if the film is ever exposed to high temperatures (e. g., 120 degrees Fahrenheit to 130 degrees Fahrenheit) such as with an air conditioner failure, the film will ''develop'' and turn completely black, causing a catastrophic loss of all the information on the film.

Quality Standards (§ 1230.14(d))

ARMA and a member from the public suggested adding a clause to the second sentence so that it will read as follows: ''Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991.'' We accept this comment and have incorporated the suggested clause.

Film and Image Requirements for Temporary Records (§ 1230.16(a))

ARMA recommended use of the ARMA glossary to define temporary records in this section. We did not adopt this comment. Section 1230.16(a) does not define ''temporary records'' but pertains to film and image requirements. We require that temporary records retained for 100 years or longer meet the same image requirements as permanent records. This is not a new requirement. It already exists in the current regulation.

Inspection Period (§ 1230.22(b))

ARMA suggested changing the inspection period from every 2 years to every 5 years because they believe the longer inspection period is sufficient under appropriate storage conditions and would be less costly. No Federal agency has objected to the 2-year inspection requirement that NARA selected.

We partially accept this comment. We believe that it is important to conduct an initial inspection when the microfilm is 2 years old to identify any problems that did not appear when the film was processed and to ensure that it is stored in the proper environment. Acetate-based microfilm stock, which was used prior to 1990, is more susceptible to deterioration than the polyester-based microfilm used today. Therefore, we are retaining the requirement for inspection every 2 years for microfilms produced before 1990. Unless there is a catastrophic event (e.g., extended failure of environmental controls), microfilms produced during or after 1990 must be inspected on a 5-year cycle after the initial 2-year inspection.

Percentage of Inspection Sampling (§ 1230.22(a))

ARMA commented that § 1230.22(a) does not indicate the percentage of inspection sampling that is required. They questioned whether inspection is to cover 100 percent of all rolls of film or a lesser sampling. They recommended a sampling of approximately 10 percent because it would provide a reliable inspection and help reduce costs incurred with the inspection process. They also recommended adding a separate section to address

microfilm inspection procedures. We did not adopt these comments. There is no need for a change in language, since we believe that what ARMA is concerned about is adequately covered in ANSI/AIIM MS45–1990. That standard addresses both the proper sampling procedures (1/1000th of the group or 100 microforms, whichever is greater, or the whole group if less than 100 microforms) and the proper inspection procedures. No additional language is, therefore, required.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1230

Archives and records, Incorporation by reference.

■ For the reasons set forth in the preamble, NARA revises part 1230 of title 36, Code of Federal Regulations, to read as follows:

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

Subpart A—General

Sec.

1230.1 What does this part cover?
1230.2 What is the authority for this part?
1230.3 Publications incorporated by reference.
1230.4 Definitions.

Subpart B—Program Requirements

1230.7 What must agencies do to manage microform records?

Subpart C—Microfilming Standards

1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?
1230.12 What are the steps to be followed in filming records?
1230.14 What are the filming requirements for permanent and unscheduled records?
1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

Subpart D—Storage, Use and Disposition Standards of Microform Records

1230.20 How should microform records be stored?
1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?
1230.24 What are NARA inspection requirements for temporary microform records?
1230.26 What are the use restrictions for permanent and unscheduled microform records?
1230.28 What must agencies do to send permanent microform records to a records storage facility?
1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

Subpart E—Centralized Micrographic Services

1230.50 What micrographic services are available from NARA?

Authority: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

§ 1230.1 What does this part cover?

This part covers the standards and procedures for using micrographic technology to create, use, store, inspect, retrieve, preserve, and dispose of Federal records.§ 1230.2 What is the authority for this part?

44 U.S.C. chapters 29 and 33, authorize the Archivist of the United States to:

(a) Establish standards for copying records by photographic and microphotographic means;

(b) Establish standards for the creation, storage, use, and disposition of microform records in Federal agencies; and

(c) Provide centralized microfilming services for Federal agencies.

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They may also be examined at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**.

(b) *American National Standards Institute (ANSI) and International (ISO) standards.* ANSI standards cited in this part are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036. The standards can be ordered on line at http://webstore.ansi.org/ansidocstore/default.asp.

ISO 10602:1995(E), February 1, 1995, Second edition, Photography–Processed silver-gelatin type black-and-white film–Specifications for stability.

ANSI/PIMA IT9.2–1998, April 15, 1998, American National Standard for Imaging Materials—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI/ISO 5.2-1991, ANSI/NAPM IT2.19–1994, February 20, 1995, American National Standard for Photography—Density Measurements—Part 2: Geometric Conditions for Transmission Density.

ANSI/ISO 5-3-1995, ANSI/NAPM IT2.18–1996, March 8, 1996, American National Standard for Photography—Density Measurements—Part 3: Spectral Conditions.

ISO 18911: 2000(E), First edition, November 1, 2000, Imaging materials–Processed safety photographic films—Storage practices.

(c) *Association of Information and Image Management (AIIM) Standards.* You may obtain the following standards from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. The standards can be ordered on line at http://www.aiim.org/.

ANSI/AIIM MS1–1996, August 8, 1996, Standard Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control.

ANSI/AIIM MS5–1992, December 21, 1992, Standard for Information and Image Management–Microfiche.

ANSI/AIIM MS14–1996, August 8, 1996, Standard Recommended Practice–Specifications for 16mm and 35mm Roll Microfilm.

ANSI/AIIM MS19–1993, August 18, 1993, Standard Recommended Practice–Identification of Microforms.

ANSI/AIIM MS23–1998, June 2, 1998, Standard Recommended Practice–Production, Inspection, and Quality Assurance of First-Generation, Silver Microforms of Documents.

ANSI/AIIM MS32–1996, February 16, 1996, Standard Recommended Practice–Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1996, July 16, 1996, Dimensions of Unitized Microfilm Carriers and Apertures (Aperture, Camera, Copy and Image Cards).

ANSI/AIIM MS43–1998, June 2, 1998, Standard Recommended Practice–Operational Procedures–Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, January 22, 1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, May 10, 1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

§ 1230.4 Definitions.

The following definitions apply to this part:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

Computer Output Microfilm (COM). Microfilm containing data converted and recorded from a computer.

Facility. An area used exclusively to make or copy microforms.

Microfilm. **(1)** Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages on film; or

(3) A fine-grain, high resolution photographic film containing microimages.

Microform. Any form containing microimages.

Microimage. A document such as a page of text or a drawing that is too small to be read without magnification.

Permanent record. Permanent record has the meaning specified in § 1220.14 of this chapter.

Records storage facility. Records storage facility has the meaning specified in § 1220.14 of this chapter.

Temporary record. Temporary record has the meaning specified in § 1220.14 of this chapter.

Unscheduled record. Unscheduled record has the meaning specified in § 1220.14 of this chapter.

Use or work copies. Duplicates of original film made to be used for reference or for duplication on a recurring or large-scale basis. These are not preservation master copies, which must be stored unused as specified in § 1230.20.

Subpart B—Program Requirements

§ 1230.7 What must agencies do to manage microform records?

Federal agencies must manage microform records by taking the following actions:

(a) Assign responsibility for an agencywide program for managing microform records and notify the National Archives and Records Administration (NWM), 8601 Adelphi Rd., College Park, MD 20740-6001 of the name and title of the person assigned the responsibility.

(b) Manage the microform records as part of other records and information resources management programs of the agency.

(c) Include microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminate them to appropriate officials.

(d) Address records management issues, including disposition, before approving new microform records systems or enhancements to existing systems.

(e) Train the managers and users of microform records.

(f) Develop records schedules covering microform records and finding aids, secure NARA approval, and apply the disposition instructions.

(g) Schedule computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, in accordance with part 1234 of this chapter.

(h) Review practices used to create and manage microform records periodically to ensure compliance with NARA standards in this part.

Subpart C—Microfilming Standards

§ 1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?

(a) *Permanent or unscheduled records.* Agencies must schedule both source documents (originals) and microforms. NARA must approve the schedule, Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with part 1228 of this chapter before any records, including source documents, can be destroyed. NARA will not approve the destruction of original records that have intrinsic value, or security classified or otherwise restricted original records that are scheduled as permanent, or original records that are scheduled as permanent and that have other characteristics that would limit the usefulness of microform copies for public reference.

(1) Agencies that comply with the standards in § 1230.14 must include on the SF 115 the following certification: ''This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230.''

(2) Agencies using microfilming methods, materials, and procedures that do not meet the standards in § 1230.14(a) must include on the SF 115 a description of the system and standards used.

(3) When an agency intends to retain the silver original microforms of permanent records and destroy the original records, the agency must certify in writing on the SF 115 that the microform will be stored in compliance with the standards of § 1230.20 and inspected as required by § 1230.22.

(b) *Temporary records.* Agencies do not need to obtain additional NARA approval when destroying scheduled temporary records that have been microfilmed. The same approved retention period for temporary records is applied to microform copies of these records. The original records can be destroyed once microfilm is verified, unless legal requirements prevent their early destruction.

§ 1230.12 What are the steps to be followed in filming records?

(a) Ensure that the microforms contain all information shown on the originals and that they can be used for the purposes the original records served.

(b) Arrange, describe, and index the filmed records to permit retrieval of any particular document or component of the records. Title each microform roll or fiche with a titling target or header. For fiche, place the titling information in frame 1 if the information will not fit on the header. At a minimum, titling information must include:

(1) The title of the records;

(2) The number or identifier for each unit of film;

(3) The security classification, if any; and

(4) The name of the agency and organization the inclusive dates, names, or other data identifying the records to be included on a unit of film.

(c) Add an identification target showing the date of filming. When necessary to give the film copy legal standing, the target must also identify the person who authorized the microfilming. See ANSI/AIIM MS19–1993 for standards for identification targets.

(d) The following formats are mandatory standards for microforms:

(1) *Roll film.* **(i)***Source documents.* The formats described in ANSI/AIIM MS14–1996 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1998 for the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32–1996, Table 1 are mandatory, and the aperture card format ''D Aperture'' shown in ANSI/AIIM MS41–1996, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the

requirements of ANSI/PIMA IT9.2–1998. The 35mm film used in the aperture card application must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

(ii) *COM.* Computer output microfilm (COM) generated images must be the simplex mode described in ANSI/AIIM MS14–1996 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the formats and reduction ratios prescribed in ANSI/AIIM MS5–1992 (R1998) must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1998 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(e) *Index placement.* **(1)***Source documents.* When filming original (source) documents, place indexes, registers, or other finding aids, if microfilmed, either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Place indexes on computer-generated microforms following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 What are the filming requirements for permanent and unscheduled records?

(a) *General requirements.* **(1)** Apply the standards in this section for microfilming of:

(i) Permanent paper records where the original paper record will be destroyed or otherwise disposed of;

(ii) Unscheduled paper records where the original paper record will be destroyed or otherwise disposed of; and

(iii) Permanent and unscheduled original microform records (no paper originals) produced by automation, such as computer output microfilm (COM).

(2) Do not destroy permanent or unscheduled paper records after microfilming without authorization from NARA on a SF 115 (see § 1230.10(a)).

(b) *Film stock standards.* Polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1—1996 for LE 500 film must be used in all applications.

(c) *Processing standards.* Microforms must be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI/NAPM IT9.1–1996. Follow processing procedures in ANSI/AIIM MS1–1996 and MS23–1998.

(d) *Quality standards.* **(1)** *Resolution.* **(i)** *Source documents.* Determine minimum resolution on microforms of source documents using the method in the Quality Index Method for determining resolution and anticipated losses when duplicating, as described in ANSI/AIIM MS23–1998 and MS43–1998. Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991. Use the smallest character used to display information to determine the height used in the Quality Index formula. A Quality Index of five is required at the third generation level.

(ii) *COM.* Computer output microforms (COM) must meet the requirements of ANSI/AIIM MS1–1996.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms must be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1998. The densitometer must meet with ANSI/NAPM IT2.18–1996, for spectral conditions and ANSI/NAPM IT2.19–1994, for geometric conditions for transmission density.

(i) Recommended visual diffuse transmission background densities for images of documents are as follows:

Classification	Description of document	Background density
Group 1	High-quality, high contrast printed book, periodicals, and black typing.	1.3–1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high contrast printing.	1.15–1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0–1.2
Group 4	Low-contrast manuscripts and drawing, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5	Poor-contrast documents (special exception).	0.7–0.85

(ii) Recommended visual diffuse transmission densities for computer generated images are as follows:

Film Type	Process	Density Measurement Method	Min. Dmax[1]	Max. Dmin[1]	Minimum Density Difference
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

[1]Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films must not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or stroke width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, reduce the background density as needed to ensure that the copies will be legible.

§ 1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

(a) *Temporary records with a retention period over 99 years.* Follow the film and image requirements in § 1230.14.

(b) *Temporary records to be kept for less than 100 years.* NARA does not require the use of specific standards. Select a film stock that meets agency needs and ensures the preservation of the microforms for their full retention period. Consult appropriate ANSI standards, available as noted in § 1230.3, or manufacturer's instructions for processing microfilm of these temporary records. Follow the manufacturer's recommendations for production and maintenance of temporary microfilm to ensure that the image is accessible and usable for the entire retention period.

Subpart D—Storage, Use and Disposition Standards for Microform Records

§ 1230.20 How should microform records be stored?

(a) *Permanent and unscheduled records.* Store permanent and unscheduled microform records under the extended term storage conditions specified in ISO 18911:2000 and ANSI/PIMA IT9.2–1998, except that the relative humidity of the storage area must be a constant 35 percent RH, plus or minus 5 percent. Do not store non-silver copies of microforms in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Store temporary microform records under conditions that will ensure their preservation for their full retention period. Agencies may consult Life Expectance (LE) guidelines in ANSI/AIIM standards (see § 1230.3 for availability) for measures that can be used to meet retention requirements.

§ 1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?

(a) Agencies must inspect, or arrange to pay a contractor or NARA to inspect the following categories of microform records stored at the agency, at a commercial records storage facility, or at a NARA records center following the inspection requirements in paragraph (b) of this section:

(1) Master films of permanent records microfilmed in order to dispose of the original records;

(2) Master films of permanent records originally created on microfilm;

(3) Other master films scheduled for transfer to the National Archives; and

(4) Master films of unscheduled records.

(b) The films listed in paragraph (a) of this section must be inspected initially in accordance with ANSI/AIIM MS45—1990. All films must be inspected when they are 2 years old. After the initial 2-year inspection, unless there is a catastrophic event, the films must be inspected as follows until legal custody is transferred to the National Archives and Records Administration:

(1) For microfilm that is/was produced after 1990, inspect the microfilm every 5 years.

(2) For microfilm that was produced prior to 1990, inspect the microfilm every 2 years.

(c) To facilitate inspection, the agency must maintain an inventory of microfilm listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(d) The elements of the inspection shall consist of:

(1) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

(2) A rereading of resolution targets;

(3) A remeasurement of density; and

(4) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(e) The agency must prepare an inspection report, and send a copy to NARA in accordance with § 1230.28(b). The inspection report must contain:

(1) A summary of the inspection findings, including:

(i) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(ii) The quantity of microforms inspected;

(iii) An assessment of the overall condition of the microforms;

(iv) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(v) A summary of corrective action taken.

(2) A detailed inspection log created during the inspection that contains the following information:

(i) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection (see paragraph (a)(4) of this section);

(iv) Any defects uncovered; and

(v) The corrective action taken.

(f) If an inspection shows that a master microform is deteriorating, the agency must make a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the inspection requirements (see § 1230.22) before transfer to a record center or to the National Archives.

(g) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

§ 1230.24 What are NARA inspection requirements for temporary microform records?

NARA recommends, but does not require, that agencies use the inspection by sampling procedures described in § 1230.22(a) and (b).

§ 1230.26 What are the use restrictions for permanent and unscheduled microform records?

(a) Do not use the silver gelatin original microform or duplicate silver gelatin microform of permanent or unscheduled records created in accordance with § 1230.14 of this part (archival microform) for reference purposes. Agencies must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

(b) Use duplicates for:

(1) Reference;

(2) Further duplication on a recurring basis;

(3) Large-scale duplication; and

(4) Distribution of records on microform.

(c) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.28 What must agencies do to send permanent microform records to a records storage facility?

(a) Follow the procedures in part 1228, subpart I, of this chapter and the additional requirements in this section.

(b) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

(c) Include the following information on the transmittal (SF 135 for NARA records centers), or in an attachment to the transmittal. For records sent to an agency records center or commercial records storage facility, submit this information to NARA as part of the documentation required by § 1228.154(c)(2) of this chapter:

(1) Name of the agency and program component;

(2) The title of the records and the media/format used;

(3) The number or identifier for each unit of film;

(4) The security classification, if any;

(5) The inclusive dates, names, or other data identifying the records to be included on a unit of film;

(6) Finding aids that are not contained in the microform; and

(7) The inspection log forms and inspection reports required by § 1230.22(a) (5) and (6).

(d) Agencies may transfer permanent microform records to a records storage facility meeting the storage requirements in § 1230.20(a) (see § 1228.152(e)(3) of this chapter for NARA centers) only after the first inspection or with certification that the microforms will be inspected by the agency, an agency contractor, or a NARA records center (on a reimbursable basis) when the microforms become 2 years old.

§ 1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

(a) Follow the procedures in part 1228, subpart L, of this chapter and the additional requirements in this section.

(b) Originate the transfer by submitting an SF 258, Agreement to Transfer Records to the National Archives of the United States, unless otherwise instructed by NARA.

(c) If the records are not in a NARA records center, submit the information specified in § 1230.28(c).

(d) Transfer the silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy.

(e) Ensure that the inspection of the microform is up-to-date. If the microform records were recently produced, please note that NARA will not accession permanent microform records until the first inspection (when the microforms are 2 years old) has been performed.

(f) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

Subpart E—Centralized Micrographic Services

§ 1230.50 What micrographic services are available from NARA?

Some NARA records centers provide reimbursable microfilming services, including preparing, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services from NARA should contact the Office of Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740-6001, or the director of the NARA records center serving the agency's records (see § 1228.150(a) of this chapter). The fees for microfilming services will appear in NARA bulletins, which are available on NARA's web site at http://www.nara.gov/records/policy/bulletin.html or from the Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740-6001.

Dated: April 23, 2002.

John W. Carlin,
Archivist of the United States.

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Federal Register

Tuesday,
May 14, 2002

Part V

The President

Proclamation 7557—Mother's Day, 2002

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

Presidential Documents

Title 3—

The President

Proclamation 7557 of May 9, 2002

Mother's Day, 2002

By the President of the United States of America

A Proclamation

Mothers are central to the success of the American family. Their love, dedication, and wisdom touch countless lives every day in every community throughout our land. And their love and guidance of children help to develop healthy and spiritually sound families.

President John Quincy Adams once said, ''All that I am my mother made me.'' President Abraham Lincoln believed, ''All that I am or hope to be I owe to my angel mother. I remember my mother's prayers and they have always followed me. They have clung to me all my life.'' These statements are just as true for the millions of Americans who credit their mothers for helping to successfully shape their lives.

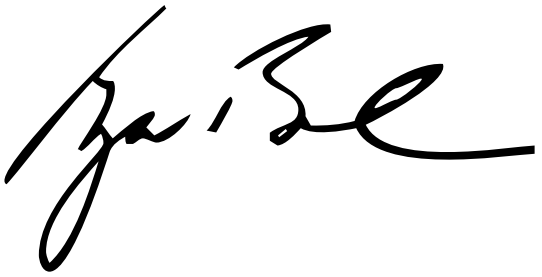
Millions of American mothers are at work in communities across the United States, improving the lives of their families and their neighbors through countless acts of thoughtful kindness. They energize, inspire, and effect change in homes, schools, governments, and businesses throughout our country. By their example, mothers teach their children that serving others is the greatest gift they can give.

Nearly 100 years ago, Anna Jarvis of Philadelphia helped establish the first official Mother's Day observance. Her campaign to organize such a holiday began as a remembrance of her late mother, who, in the aftermath of the Civil War, had tried to establish ''Mother's Friendship Days'' as a way to bring unity and reconciliation to our Nation. In 1910, West Virginia became the first State officially to observe Mother's Day. The idea caught on quickly; for just over a year later, nearly every State in the Union had officially recognized the day. In 1914, President Woodrow Wilson issued the first Mother's Day proclamation, stating that the observance serves as a ''public expression of our love and reverence for the mothers of our country.''

On this special day and throughout the year, our mothers deserve our greatest respect and deepest appreciation for their love and sacrifice. I especially commend foster mothers for answering my call to service, volunteering their time and their hearts to aid children in need of a mother's love. To honor mothers, the Congress, by a joint resolution approved May 8, 1914, as amended (38 Stat. 770), has designated the second Sunday in May as ''Mother's Day'' and has requested the President to call for its appropriate observance, which, as the son of a fabulous mother, I am pleased and honored to do again this year.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 12, 2002, as Mother's Day. I encourage all Americans to express their love, respect, and gratitude to mothers everywhere for their remarkable contributions to their children, families, communities, and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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